

**CASE**

**NUMBER:**

99-206

INDEX FOR CASE: 99-206  
GTE SOUTH, INC.  
Complaints - Rates, Service  
OF BLUEGRASS CELLULAR, INC.

IN THE MATTER OF BLUEGRASS CELLULAR VS. GTE SOUTH, INC.

SEQ NBR	ENTRY DATE	REMARKS
0001	05/10/99	Application.
0002	05/18/99	Acknowledgement letter.
0003	05/24/99	Order directing GTE to satisfy or answer prima facie case by 6/3/99.
M0001	06/03/99	LARRY CALLISON GTE-MOTION TO DISMISS, ALTERNATIVE COUNTERCLAIM, BRIEF
M0002	08/09/99	JOHN SELENT GTE SOUTH BLUEGRASS CELL-AGREED ORDER OF DISMISSAL
0004	08/19/99	FINAL ORDER DISMISSING CASE



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 99-206  
GTE SOUTH, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on August 19, 1999.

See attached parties of record.

*Stephanie J. Bell*

Secretary of the Commission

SB/sa  
Enclosure

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State Manager  
GTE Service Corporation  
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AVP & Associate Counsel  
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ATTN: Network Planning Manager  
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Mr. John Selent  
Dinsmore & Shohl LLP  
2000 Meidinger Tower  
Louisville, KY. 40202

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY BLUEGRASS )  
CELLULAR, INC. FOR )  
ENFORCEMENT OF ITS ) CASE NO. 99-206  
INTERCONNECTION AGREEMENT )  
WITH GTE SOUTH INCORPORATED )

O R D E R

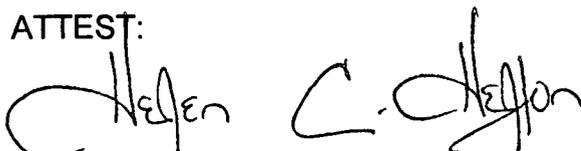
On March 9, 1999, Bluegrass Cellular Inc. for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership, and Cumberland Cellular Partnership ("Bluegrass Cellular") filed a letter, which the Commission will treat as a petition, for the enforcement of its interconnection agreement with GTE South Incorporated ("GTE"). The Commission ordered GTE to respond to the complaint on May 24, 1999. GTE responded on June 3, 1999. Then, on August 9, 1999, both parties filed a joint agreement of dismissal, having settled the issues in the matter.

IT IS THEREFORE ORDERED that this matter is dismissed with prejudice.

Done at Frankfort, Kentucky, this 19th day of August, 1999.

By the Commission

ATTEST:

  
Executive Director

**DINSMORE  
& SHOHL LLP**

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August 6, 1999

RECEIVED

AUG 09 1999

PUBLIC SERVICE  
COMMISSION

Ms. Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, KY 40602-0615

*RE: In the Matter of: Petition by Bluegrass Cellular, Inc. for Enforcement of Its  
Interconnection Agreement with GTE South Incorporated  
Adm. Case No. 99-206*

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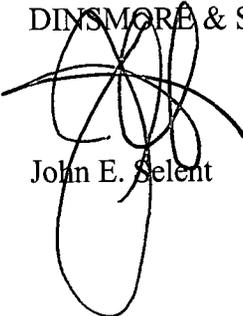
Dear Ms. Helton:

With this letter I am enclosing for filing with the Public Service Commission of the Commonwealth of Kentucky in the above-referenced matter the original and eleven (11) copies of the Agreed Order of Dismissal. Please return a file stamped copy of this pleading in the self-addressed, postage prepaid envelope furnished herewith.

If you have any questions with respect to this matter, please call me. Thank you.

Very truly yours,

DINSMORE & SHOHL LLP

  
John E. Selent

JES/ocn  
Enclosures

31160.17  
0031445.01

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
AUG 09 1999  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

PETITION BY BLUEGRASS )  
CELLULAR, INC. FOR )  
ENFORCEMENT OF ITS ) CASE NO. 99-206  
INTERCONNECTION AGREEMENT )  
WITH GTE SOUTH INCORPORATED )

AGREED ORDER OF DISMISSAL

GTE South Incorporated ("GTE") and Bluegrass Cellular Inc. ("Bluegrass Cellular") for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership, and Cumberland Cellular Partnership, having agreed to the dismissal of the above styled action;

**IT IS HEREBY ORDERED AND ADJUDGED** that this case is **DISMISSED**, with prejudice.

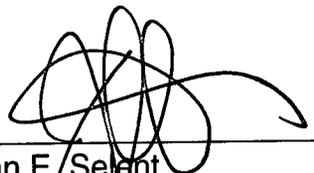
Done at Frankfort, Kentucky, this \_\_\_ day of \_\_\_\_\_, 1999.

By the Commission

ATTEST:

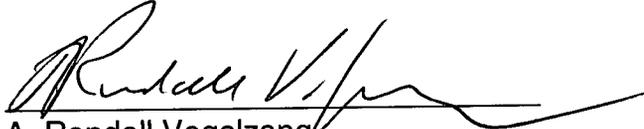
\_\_\_\_\_  
Executive Director

AGREED TO:



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John E. Selent  
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(502) 585-2450  
**Counsel to Petitioner**



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RECEIVED

JUN 18 1999

PUBLIC SERVICE  
COMMISSION

June 17, 1999

**via Facsimile**

Ms. Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, KY 40602-0615

*RE: In the Matter of: Petition by Bluegrass Cellular Inc. for Enforcement of its  
Interconnection Agreement with GTE South Incorporated - P.S.C. Case No. 99-206*

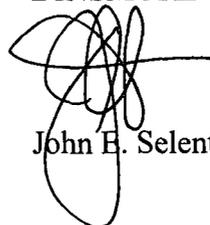
Dear Ms. Helton:

The purpose of this letter is to advise the Public Service Commission (the "Commission") that we believe we have settled the above-captioned case. We hope to file an agreed order of dismissal with the Commission next week. Thus, the Commission need not take any action on this case at this time.

Thank you, and if you have any questions with respect to this matter, please call me.

Very truly yours,

DINSMORE & SHOHL LLP



John E. Selent

JES/BMA

cc: Amy Daugherty

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 3 1999

PUBLIC SERVICE  
COMMISSION

In the Matter of:

The Petition by Bluegrass )  
Cellular, Inc. for Enforcement )  
of Its Interconnection ) Case No. 99-206  
Agreement with GTE South )  
Incorporated )

**GTE SOUTH INCORPORATED'S ALTERNATIVE COUNTERCLAIM FOR  
RECIPROCAL "TRUE UP" COMPENSATION**

COMES NOW, GTE SOUTH INCORPORATED ("GTE"), and by and through  
its attorneys, would respectfully show the Commission as follows:

**I. BACKGROUND**

Bluegrass Cellular, Inc. ("Bluegrass") filed a petition with the Commission on or about March 9, 1999 complaining of certain GTE practices relating to the parties' interconnection agreement. Specifically, Bluegrass contends that it was entitled to "negotiated rates" from March 26, 1998 until June 15, 1998. GTE has filed a brief that more particularly addresses the dispute between the parties and the grounds for this Alternative Counterclaim. *See* GTE South Incorporated's Brief in Support of Its Motion to Dismiss Bluegrass Cellular, Inc.'s Petition and Alternative Counterclaim for Reciprocal "True Up" Compensation (filed June 3, 1999).

## II. ALTERNATIVE COUNTERCLAIM

GTE maintains that Bluegrass' claim regarding its entitlement to certain "negotiated rates" from March 26, 1998 to June 15, 1998 is meritless. Nevertheless, should the Commission rule in Bluegrass' favor on the merits and order GTE to pay "true up" compensation based on the negotiated rates, then GTE likewise is entitled to the same true up since compensation in the Agreement is reciprocal. Had the negotiated rates been in effect during the time period in dispute, Bluegrass would have been obligated to pay GTE an additional \$10,017.00. Should Bluegrass prevail on the merits of its petition, GTE demands that Bluegrass satisfy its outstanding liability in the amount of \$10,017.00.

## III. PRAYER

THEREFORE, based on the foregoing, and on the arguments and authorities filed in support of this Alternative Counterclaim, GTE respectfully requests—in the event it determines that Bluegrass is entitled to a true up in compensation under the negotiated rates for the time period in dispute—that the Commission:

- (1) GRANT GTE's Alternative Counterclaim in the amount of \$10,017.00, which sum represents the amount to which GTE would have been entitled had negotiated rates been in effect for both parties; and
- (2) GRANT GTE all other relief to which it may be legally and/or equitably entitled.

Respectfully submitted this 3<sup>rd</sup> day of June, 1999:

GTE SOUTH INCORPORATED

By: 

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Its Attorneys

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 3 1999

PUBLIC SERVICE  
COMMISSION

In the Matter of:

The Petition by Bluegrass )  
Cellular, Inc. for Enforcement )  
of Its Interconnection )  
Agreement with GTE South )  
Incorporated )

Case No. 99-206

**GTE SOUTH INCORPORATED'S BRIEF IN SUPPORT OF ITS  
MOTION TO DISMISS BLUEGRASS CELLULAR, INC.'S PETITION  
and  
ALTERNATIVE COUNTERCLAIM FOR RECIPROCAL "TRUE UP"  
COMPENSATION**

On May 24, 1999, the Public Service Commission of the Commonwealth of Kentucky ("Commission") issued an Order requiring GTE South Incorporated ("GTE") to respond to Bluegrass Cellular, Inc.'s ("Bluegrass") petition complaining of certain GTE practices relating to the negotiated interconnection agreement between the parties.<sup>1</sup> The interconnection agreement ("Agreement") at issue was approved by the Commission on March 26, 1998.<sup>2</sup>

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<sup>1</sup> Bluegrass Cellular filed a letter with the Commission on March 9, 1999 for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership and Cumberland Cellular Partnership, which the Commission determined to treat as a "petition."

<sup>2</sup> See Case No. 98-116, Interconnection Agreement between GTE South Incorporated and Bluegrass Cellular, Inc. for and on behalf of Kentucky RSA No. 3 Cellular General

[Footnote continued on next page]

GTE contends that Bluegrass' petition should be dismissed on the ground that, by virtue of the contractual dispute resolution provision contained in the Agreement, the Commission lacks jurisdiction over this dispute. Nevertheless, should the Commission determine otherwise, the Commission should not exercise its jurisdiction to resolve this dispute, but rather permit the parties to seek a resolution pursuant to the Commission-approved alternative dispute resolution ("ADR") provision in the Agreement.

Furthermore, even assuming the Commission finds jurisdiction to review this dispute, Bluegrass' claim regarding its entitlement to certain negotiated rates as of the date the Commission approved the Agreement is without merit. Alternatively, should the Commission find in favor of Bluegrass and order GTE to pay "negotiated rates" from the date the Commission approved the Agreement, the Commission should offset Bluegrass' recovery commensurate with the amount to which GTE also would have been entitled under the negotiated rates for the same time period.

To assist the Commission's review, the following is a brief overview of the parties' dispute.

### **I. OVERVIEW OF DISPUTE**

For a number of years, GTE and Bluegrass have had an interconnection agreement covering compensation for the exchange of telecommunications traffic. On or about December 16, 1996, Bluegrass requested a renegotiation of its interconnection agreement pursuant to the

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[Footnote continued from previous page]

Partnership, Kentucky RSA No. 4 Cellular General Partnership and Cumberland Cellular Partnership.

Telecommunications Act of 1996 (the "Act"). GTE complied with the request and the parties renegotiated the instant Agreement (or "new agreement"). The Agreement was submitted to and approved by the Commission on March 26, 1998 (a copy of which is attached hereto at **Exhibit 1**).

Pending the Agreement's approval by the Commission, the parties assessed upon each other certain "interim rates" for the transport and termination of local traffic as required by applicable FCC rule.<sup>3</sup> The parties agreed that the "negotiated rates" in the new agreement would take effect only when Bluegrass brought its existing interconnection arrangements into compliance with the arrangements specified in Article IV, Section 4.3 of the Agreement. Until then, the new agreement specified that the "interim rates" would continue to apply.<sup>4</sup> On June 15, 1998, less than three months after the Commission approved the Agreement, Bluegrass initiated

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<sup>3</sup> See 47 C.F.R. § 51.717. The application of the "interim" rates prior to Commission approval of the Agreement is not in dispute.

<sup>4</sup> Whereas Bluegrass originally utilized a "Type 1" interconnection in the parties' pre-existing arrangement in Kentucky, the parties agreed that Bluegrass would have to convert its interconnection trunks to a "modified end-office connection" arrangement in order to facilitate accurate billing and payment of reciprocal compensation for local traffic under the new agreement. Under the pre-existing "Type 1" interconnection arrangement, the parties were unable to segregate Bluegrass' "local traffic"—which is subject to reciprocal compensation—from other types of traffic such as switched access to third-party interexchange carriers. As the Type 1 arrangement does not segregate "local traffic" from other types of traffic, the arrangement creates considerable difficulties in billing and payment of reciprocal compensation. Thus, under Article IV, Section 4.3 of the Agreement, Bluegrass agreed to convert its network so that traffic that is subject to reciprocal compensation would be routed over specific trunks.

the required trunk conversion and GTE began paying Bluegrass the “negotiated rates” pursuant to the Agreement.<sup>5</sup>

In its petition, Bluegrass now asserts, notwithstanding the parties’ agreement, that it was entitled to the “negotiated rates” from March 26, 1998—the date the Commission approved the Agreement—without regard to whether Bluegrass conformed its network to comply with the interconnection arrangements contained therein. Thus, Bluegrass contends it is entitled to the difference between the “interim rates” and the “negotiated rates” for the time period in dispute—March 26, 1998 to June 15, 1998. In Bluegrass’ calculation, this difference amounts to \$28,422.79. Nevertheless, during this period, Bluegrass continued to bill GTE at the higher interim rates. Since the rates are reciprocal, if Bluegrass’ contentions were valid—GTE maintains they are not—GTE likewise would be entitled to the difference between the two rates, which is \$10,017.00. Thus, if the Commission finds in favor of Bluegrass, Bluegrass’ claim must be reduced from \$28,422.79 to \$18,405.79.

## II. ARGUMENT AND AUTHORITIES

As will be shown herein, the parties agreed to resolve their disputes pursuant to an exclusive contractual dispute resolution provision in the Agreement. This provision requires that disputes be resolved through binding arbitration. As the Commission lacks jurisdiction to adjudicate this dispute, the Commission should dismiss Bluegrass’ complaint and order the

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<sup>5</sup> In its petition, Bluegrass claims that “GTE agreed to implement the new rates effective June 15, 1998, whether or not the trunk changes had been made.” *See* Petition at 3. This statement is inaccurate. GTE began paying the negotiated rates on this date because this was the date upon which Bluegrass submitted its orders to convert its trunk groups.

parties to private arbitration consistent with the Agreement. Should the Commission determine that it has jurisdiction to review this dispute, the Commission should enforce the provisions of the Agreement and deny Bluegrass' meritless claim asserting entitlement to negotiated rates during the disputed time period. Alternatively, if the Commission orders GTE to pay the negotiated rates retroactively from the date the Commission approved the Agreement, the Commission should grant GTE's counterclaim and order that Bluegrass' recovery be offset by the amount to which GTE would have been entitled had the negotiated rates been in effect for both parties during the disputed time period.

**1. By virtue of the contractual dispute resolution provision in the Agreement, the Commission lacks jurisdiction over this dispute.**

In its petition, Bluegrass attempts to invoke the Commission's review of this dispute in violation of the "Dispute Resolution" provision in the Agreement. At its core, this is a dispute about the application of a *contractual* provision that already has been approved by the Commission.<sup>6</sup> The Commission, therefore, has done its part. Consequently, the Commission should dismiss Bluegrass' petition and permit the parties to resolve their dispute through the Agreement's exclusive dispute resolution procedures.

After extended and thorough negotiations, Bluegrass agreed to Article III, Section 12 of the Agreement, which requires the parties to use specific "alternative dispute resolution ["ADR"] procedures as their *sole remedy* with respect to any controversy or claim arising out of or relating to this Agreement or its breach." (emphasis added). Under the ADR provisions of the

Agreement, a dispute is to be referred to the parties' respective business representatives for negotiations. If the dispute cannot be resolved through negotiations within sixty (60) business days, the Agreement requires that the dispute be submitted to binding arbitration.<sup>7</sup>

Bluegrass invoked the ADR negotiations on or about December 16, 1998. At that time, Bluegrass acknowledged that should the negotiations fail to settle the dispute, the dispute would be subject to arbitration. *See* Letter from Bluegrass' President Ron Smith, dated December 16, 1998 (attached hereto as **Exhibit 2**). Nevertheless, when negotiations did not achieve Bluegrass' desired result, Bluegrass ignored the balance of the parties' contractual ADR procedures and filed the instant petition with the Commission in violation of the arbitration provision.

As stated by the Supreme Court of Kentucky, "Kentucky . . . favor[s] the enforcement of private arbitration contracts." *Buck Run Baptist Church, Inc. v. Cumberland Surety Ins. Co., Inc.*, 983 S.W.2d 501, 504 (Ken. 1998)(citations omitted). Furthermore, "the parties should not be free to repudiate promises to arbitrate" where such promises were entered into voluntarily after arms-length negotiations. *Id.*; *see also Valley Construction Co., Inc. v. Perry Host Mgt. Co., Inc.*, 796 S.W.2d 365, 366 (Ken. Ct. App. 1990)(stating that Kentucky favors arbitration and that private agreements to arbitrate are "generally enforced").

In this respect, Kentucky law is consistent with the law relied upon by other commissions when faced with the precise issues presented here. *See, e.g.*, Order Dismissing Complaint In Re:

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[Footnote continued from previous page]

<sup>6</sup> *See infra*, Section II, Part 2 (addressing the parties' dispute over the application of Article IV, Section 11).

Complaint of Western Wireless Corp. Against GTE Southwest, Inc., Docket No. 19200 (Tex. Public Utility Commission, August 21, 1998)(dismissing CMRS provider's complaint alleging virtually the same "interim rate" claim presented here on the ground that the dispute was subject to the interconnection agreement's ADR provisions)(attached hereto as **Exhibit 3**) and Orders Nos. 16171 and 16244 In the Matter of the Petition of Western Wireless Corp. for Arbitration with GTE Hawaiian Telephone Co., Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Docket No. 96-0352 (Hawaii Public Utility Commission, January 23, 1998 and March 13, 1998)(denying complaint and stating that, with respect to the contract provision governing the applicability of "interim rates" pending conversion of the CMRS provider's network, the dispute over the construction and interpretation of said provision is not a matter of regulatory compliance, but rather a contractual dispute to be resolved through the interconnection agreement's ADR process)(attached hereto as **Exhibit 4**).

Furthermore, federal law also supports the enforcement of private arbitration remedies. There is a strong federal presumption in favor of arbitration. *See Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987). Thus, "[a]bsent a well-founded claim that an arbitration agreement resulted from the sort of fraud or excessive economic power that 'would provide grounds for the revocation of any contract,'" the arbitration provision must be vigorously enforced. *See Shearson/American Express*, 482 U.S. at 226; *see also* 9 U.S.C. § 2 (1988)(providing that, under the Federal Arbitration Act, all agreements in writing to arbitrate

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[Footnote continued from previous page]

<sup>7</sup> *See* Agreement, Article III, Sections 12.2 – 12.3.

are "valid, irrevocable and enforceable"). Bluegrass does not allege grounds for the revocation of the arbitration provision. Nor could it. Bluegrass fully understood the effect of the ADR provision and voluntarily agreed to it after months of independent review. Furthermore, Bluegrass never sought to arbitrate the ADR provision before the Commission. Instead, Bluegrass now alleges that GTE's reliance on the ADR provisions of the Agreement is an attempt to circumvent Bluegrass' statutory rights under the Act and the Commission's enforcement of the same. While blatantly inflammatory and patently untrue, such allegations do not defeat the enforceability of the arbitration provision at issue. *See Shearson/American Express*, 482 U.S. at 226 (holding: "This duty to enforce arbitration agreements is not diminished when a party bound by an agreement raises a claim founded on statutory rights.").

This Commission's only inquiry should be whether the arbitration provision in the Agreement is sufficiently broad in scope to encompass the dispute. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985). Moreover, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *See Moses H. Cone Memorial Hosp. V. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). To that extent, the parties agreed that the ADR provisions would apply "to resolve disputes *arising out of or relating to this Agreement*["] *See* Agreement, Article III, Section 21.1. The core issue here is whether Article IV, Section 11 governs the contract rates during period in dispute. Clearly, such a dispute "arises out of" and "relates to" the Agreement. Furthermore, even under Kentucky law, the phrase "arising out of or relating to" has been construed as "expansive" and as "indicating an intent of the parties to leave as much as possible to the arbitrators." *See Beyt, Rish, Robbins Group v. Appalachian Regional Healthcare, Inc.*, 854 S.W.2d 784, 785-86 (Ken. Ct. App. 1993).

Thus, whether construed under Kentucky law or federal law, the arbitration provision in the Agreement is enforceable. The Commission should dismiss Bluegrass' petition in its entirety and permit the parties to resolve this dispute through the Agreement's exclusive ADR procedures.

**2. GTE complied with the Commission-approved Agreement and began paying Bluegrass the "negotiated rates" once Bluegrass conformed its network as required by the Agreement.**

Even if the Commission determines that it has jurisdiction over the parties' dispute, Bluegrass' claim to entitlement of negotiated rates from the date the Commission approved the Agreement is meritless. Bluegrass does not contend that GTE violated any provision of the Commission-approved Agreement with respect to rates. Rather, Bluegrass attempts to circumvent yet another valid provision of the Agreement to which it voluntarily agreed.

In this case, the Commission approved the reciprocal rate structure agreed to by the parties in the Agreement. The applicable provision provides:

Transition and Implementation. The Parties acknowledge that there may be certain instances in which existing arrangements between the Parties are not in accordance with the requirements of this agreement. Existing interconnection arrangements that are not in compliance with the requirements of this agreement shall not fall under the scope of this agreement until they are brought into compliance with the requirements of the agreement. Until such arrangements are brought into compliance with the requirements of this agreement, compensation will be in compliance with effective FCC rules, specifically §51.717 if applicable. The Parties agree to use their best efforts to bring all arrangements into compliance with the terms and conditions of this agreement within six (6) months of the effective date of this agreement or within whatever other period may be mutually agreeable to the Parties.

See Agreement, Article IV, § 11 ("Section 11").

Section 11 clearly and unambiguously provides that the negotiated rates in the Agreement would not apply until Bluegrass brought its existing interconnection arrangements with GTE into compliance with those trunking arrangements specified in the Agreement. Pending such compliance efforts, the parties agreed that the interim rates would continue in effect pursuant to Rule 51.717 and explicitly acknowledged that such efforts could last as long as six (6) months. Bluegrass initiated its required trunk conversions on June 15, 1998. Thus, the interim rates were in effect for less than three (3) months from the effective date of the Agreement. There is no dispute that Bluegrass agreed to the application of interim rates during this period. Most telling is the fact that Bluegrass billed GTE at the reciprocal interim rates during these three months.<sup>8</sup>

Bluegrass never challenged the inclusion of Section 11 during negotiations with GTE, nor did Bluegrass ever arbitrate the provision before the Commission. In approving the Agreement, the Commission implicitly determined that the interim rates called for by the Agreement—to the narrow extent they applied—were in the public's interest. Now, because it finds the negotiated rates more advantageous, Bluegrass asks the Commission to intervene impermissibly and require GTE to incur a liability never agreed to by the parties, without regard to Bluegrass' own reciprocal obligations under the Agreement.

In support of its claim, Bluegrass primarily asserts that Rule 51.717 supports the proposition that GTE is *prohibited* from charging interim rates once the Commission approved

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<sup>8</sup> Regardless of which rates applied from March 26, 1998 to June 15, 1998, the fact remains that the applicable rates—whether interim or negotiated—applied reciprocally to both parties. See 47 C.F.R. § 51.717 (providing for *reciprocal* interim rates); Agreement, Article IV, § 3.2 and Appendix C (providing for *reciprocal* negotiated rates under the Agreement).

the Agreement. However, Bluegrass' interpretation of the Rule is erroneous. Rule 51.717

provides:

(a) Any CMRS provider that operates under an arrangement with an incumbent LEC that was established before August 8, 1996 and that provides for non-reciprocal compensation for transport and termination of local telecommunications traffic is entitled to renegotiate these arrangements with no termination liability or other contract penalties.

(b) From the date that a CMRS provider makes a request under paragraph (a) until a new agreement has been either arbitrated or negotiated and has been approved by a state commission, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

47 C.F.R. § 51.717.

The obvious intent of Rule 51.717 (a) is to provide certain CMRS providers the right to renegotiate interconnection agreements under the Act where pre-existing arrangements between the parties do not provide for reciprocal compensation. In those instances where subsection (a) applies, subsection (b) then authorizes a CMRS provider to charge an ILEC, pending Commission approval of the new arbitrated or negotiated agreement, reciprocal compensation. Subsection (b) further provides for the measure of that reciprocal compensation—namely, that the CMRS provider may charge the ILEC the same rates for transport and termination of local traffic that the ILEC assesses upon the CMRS provider under the pre-existing arrangement. Notwithstanding Bluegrass' claim to the contrary, **Rule 51.717 does not speak at all to the reciprocal compensation rights of the parties under the new Commission-approved agreement.**

Bluegrass isolates from Rule 51.717 the phrase “until a new agreement has been either arbitrated or negotiated and has been approved by a state commission” and erroneously argues

that such language places a limitation on the extent to which interim rates may used.

Consequently, Bluegrass argues that once the Commission approved the Agreement, the parties were prohibited from incorporating interim rates into the new Agreement. Nevertheless, as shown above, such language was not intended to limit the use of rates under a Commission-approved agreement at all, but rather was intended merely to define the scope of *the CMRS provider's rights* pending Commission approval of the agreement. In other words, Bluegrass' rights under Rule 51.717 only extended to the date the Commission approved the Agreement.

**Once, however, the Commission approved the negotiated agreement, the reciprocal compensation rights of the parties became governed by the approved Agreement itself.**

Therefore, the continued application of interim rates arose not out of a federal rule or regulation *per se*, but rather out of the provisions of the Agreement. In accord with the parties' Agreement, GTE was obligated to pay Bluegrass (and Bluegrass was obligated to pay GTE—which Bluegrass does not dispute) at the interim rates until Bluegrass completed its trunk conversions.

### III. GTE's ALTERNATIVE COUNTERCLAIM

Alternatively, should the Commission rule in Bluegrass' favor and require GTE to pay the negotiated rates for the time period in dispute, any "true up" in reciprocal compensation must apply to both parties. The compensation is reciprocal either way.<sup>9</sup> Therefore, in such an event,

---

<sup>9</sup> See 47 C.F.R. § 51.717 (providing for reciprocal interim rates); Agreement, Article IV, § 3.2 and Appendix C (providing for reciprocal negotiated rates under the Agreement).

GTE requests that the Commission offset Bluegrass' recovery by the amount to which GTE would have been entitled during the same time period had the negotiated rates been in effect for both parties. GTE calculates that had the parties applied the negotiated rates from March 26, 1998 to June 15, 1998, Bluegrass would have been liable for an additional \$10,017.00. Thus, any recovery awarded to Bluegrass must not exceed \$18,405.79.

#### IV. CONCLUSION

Based on the foregoing, GTE respectfully requests that the Commission:

- (1) **DISMISS** Bluegrass' petition on the ground that the instant dispute is subject to the ADR procedures in the Agreement, specifically the binding arbitration provision; or
- (2) Should the Commission either determine that it has jurisdiction or decides to exercise its jurisdiction to resolve this dispute, **DENY** Bluegrass' petition on its merits.

Alternatively, if the Commission finds in favor of Bluegrass with respect to its claim for negotiated rates from the date the Agreement was approved, the Commission should

- (3) **ORDER** that any recovery awarded to Bluegrass be offset by the amount to which GTE would have been entitled had the negotiated rates been in effect for both parties from March 26, 1998 to June 15, 1998.

Respectfully submitted this 3<sup>rd</sup> day of June, 1999:

GTE SOUTH INCORPORATED

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June 3, 1999

RECEIVED

JUN 03 1999

Ms. Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, KY 40602-0615

PUBLIC SERVICE  
COMMISSION

RE: In the Matter of: The Petition by Bluegrass Cellular, Inc. for Enforcement of Its  
Interconnection Agreement with GTE South Incorporated – Case No. 99-206

Dear Ms. Helton:

Enclosed for filing with the Kentucky Public Service Commission ("Commission") are an original and ten (10) copies of GTE South Incorporated's ("GTE") Response to the Commission's May 24, 1999 Order in the above-captioned matter. GTE's Response consists of:

- (1) GTE's Motion to Dismiss Bluegrass Cellular, Inc.'s Petition;
- (2) GTE's Alternative Counterclaim for Reciprocal "True Up" Compensation;  
and
- (3) GTE's Brief in Support of Its Motion to Dismiss Bluegrass Cellular, Inc.'s  
Petition and Alternative Counterclaim for Reciprocal "True Up"  
Compensation.

Please bring this filing to the attention of the Commission, and should you have any questions, please do not hesitate to contact me at your convenience.

Yours truly,

Larry D. Callison

Enclosures

cc: Parties of Record

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUN 03 1999

PUBLIC SERVICE  
COMMISSION

In the Matter of:

The Petition by Bluegrass )  
Cellular, Inc. for Enforcement )  
of Its Interconnection )  
Agreement with GTE South )  
Incorporated )

Case No. 99-206

**GTE SOUTH INCORPORATED'S MOTION TO DISMISS  
BLUEGRASS CELLULAR, INC.'S PETITION**

COMES NOW, GTE SOUTH INCORPORATED ("GTE"), and by and through its attorneys, respectfully submits this Motion to Dismiss Bluegrass Cellular, Inc.'s Petition.

GTE HEREBY MOVES the Commission to dismiss Bluegrass Cellular, Inc.'s ("Bluegrass") petition on the ground that the instant dispute over the application of certain negotiated rates is subject to the exclusive alternative dispute resolution procedures in the parties' interconnection agreement. GTE has filed a brief that more particularly addresses the dispute between the parties and the grounds for this Motion to Dismiss. *See* GTE South Incorporated's Brief in Support of Its Motion to Dismiss Bluegrass Cellular, Inc.'s Petition and Alternative Counterclaim for Reciprocal "True Up" Compensation (filed June 3, 1999).

THEREFORE, based on the foregoing, and on the arguments and authorities filed in support of this Motion to Dismiss, GTE respectfully requests that the Commission:

- (1) DISMISS Bluegrass Cellular, Inc.'s petition in the above-captioned matter; and
- (2) GRANT GTE all other relief to which it may be legally and/or equitably entitled.

Respectfully submitted this 3<sup>rd</sup> day of June, 1999:

GTE SOUTH INCORPORATED

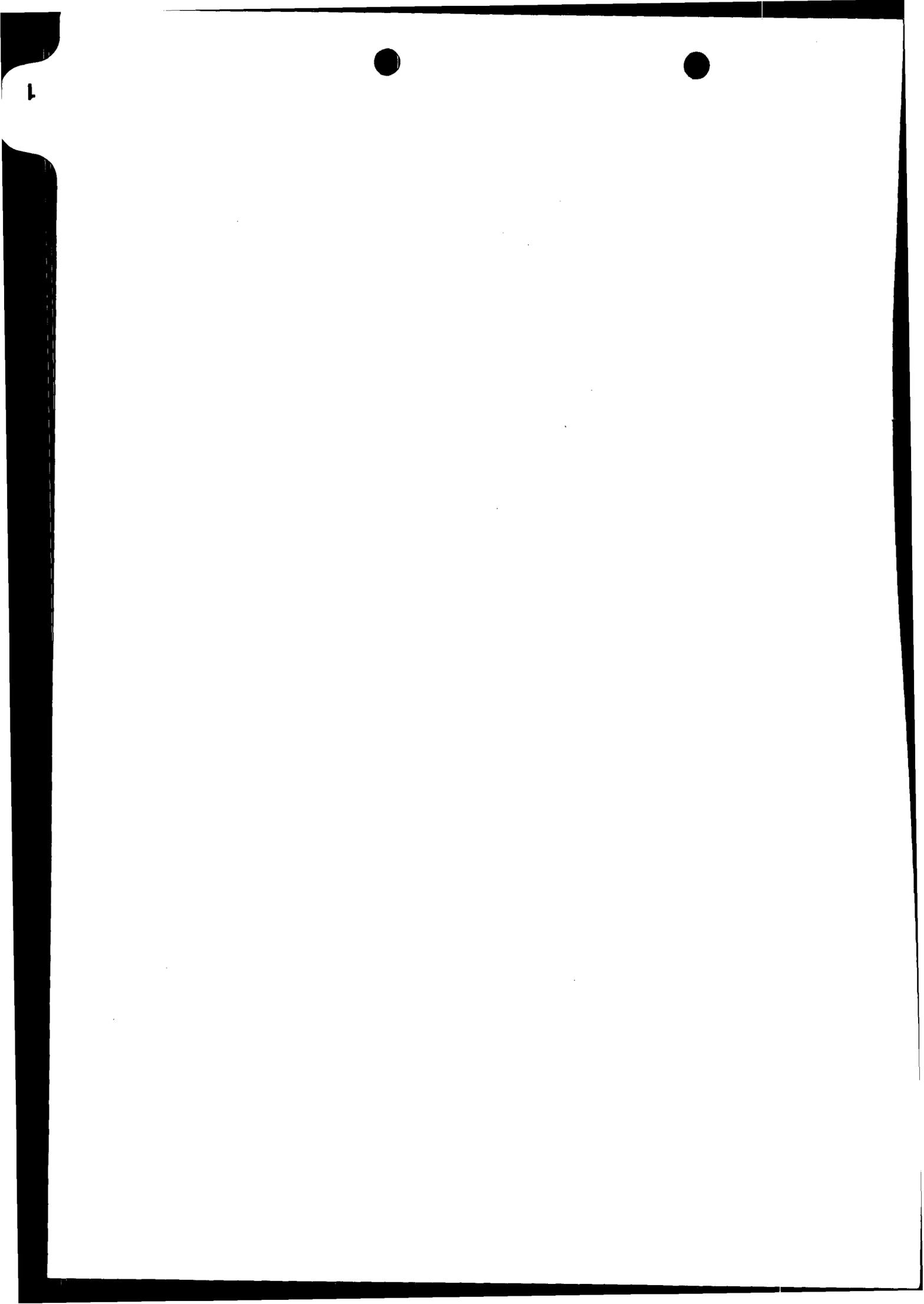
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**INTERCONNECTION AGREEMENT**

**BETWEEN**

**GTE SOUTH INCORPORATED**

**AND**

**BLUEGRASS CELLULAR INC. FOR AND ON BEHALF OF KENTUCKY RSA NO. 3  
CELLULAR GENERAL PARTNERSHIP, KENTUCKY RSA NO. 4 CELLULAR  
GENERAL PARTNERSHIP AND CUMBERLAND CELLULAR PARTNERSHIP**

**FOR THE STATE OF KENTUCKY**

**CONTRACT ID \_\_\_\_\_**

*A*

## TABLE OF CONTENTS

### ARTICLE I

SCOPE AND INTENT OF AGREEMENT .....	I-1
-------------------------------------	-----

### ARTICLE II

DEFINITIONS .....	II-1
-------------------	------

1. <u>General Definitions</u> .....	II-1
1.1 "Act" .....	II-1
1.2 "Affiliate" .....	II-1
1.3 "AMA" .....	II-1
1.4 "Answer Supervision" .....	II-1
1.5 "Applicable Law" .....	II-1
1.6 "Automatic Number Identification" or "ANI" .....	II-1
1.7 "Bellcore" .....	II-1
1.8 "Business Day" .....	II-2
1.9 "Central Office Switch" .....	II-2
1.10 "Centralized Message Distribution System" (CMDS) .....	II-2
1.11 "CLLI codes" .....	II-2
1.12 "Commercial Mobile Radio Services" (CMRS) .....	II-2
1.13 "Commission" .....	II-2
1.14 "Common Channel Signaling" or "CCS" .....	II-2
1.15 "Competitive Local Exchange Carrier" (CLEC) .....	II-2
1.16 "Compliance" .....	II-2
1.17 "Conversation Time" .....	II-3
1.18 "Customer" .....	II-3
1.19 "Customer Usage Data" .....	II-3
1.20 "DS-1" .....	II-3
1.21 "DS-3" .....	II-3
1.22 "Disconnect Supervision" .....	II-3
1.23 "Electronic File Transfer" .....	II-3
1.24 "EMR" .....	II-3
1.25 "Exchange Service" .....	II-3
1.26 "EIS" or "Expanded Interconnection Service" .....	II-3
1.27 "Facility" .....	II-4
1.28 "FCC" .....	II-4
1.29 "Generator" .....	II-4
1.30 "GTOC" .....	II-4
1.31 "Hazardous Chemical" .....	II-4
1.32 "Hazardous Waste" .....	II-4

1.33	"Imminent Danger	II-4
1.34	"Incumbent Local Exchange Carrier" (ILEC)	II-4
1.35	"Interconnection Point" ("IP")	II-4
1.36	"ISDN User Part (ISUP)"	II-5
1.37	"IXC" or "Interexchange Carrier"	II-5
1.38	"Internetwork Facilities" or "Interconnection Facility"	II-5
1.39	"LATA"	II-5
1.40	"Line Information Data Base (LIDB)"	II-5
1.41	"Local Exchange Carrier" or "LEC"	II-5
1.42	"Local Exchange Routing Guide" or "LERG"	II-5
1.43	"local provider"	II-5
1.44	"Local Traffic	II-5
1.45	"Meet-Point Billing" or "MPB"	II-6
1.46	"MECAB"	II-6
1.47	"MECOD"	II-6
1.48	"Mid-Span Fiber Meet"	II-6
1.49	"MSC" or "MTSO"	II-6
1.50	"MTA"	II-6
1.51	"NANP"	II-6
1.52	"Numbering Plan Area" or "NPA"	II-6
1.53	"NXX", "NXX Code", "Central Office Code" or "CO Code"	II-7
1.54	"911 Service"	II-7
1.55	"Owner" and "Operator"	II-7
1.56	"POI"	II-7
1.57	"Provider"	II-7
1.58	"Public Safety Answering Point" or "PSAP"	II-7
1.59	"Rate Center"	II-7
1.60	"Routing Point"	II-8
1.61	"Service Control Point" or "SCP"	II-8
1.62	"Service Switching Point" or "SSP"	II-8
1.63	"Signaling Point" or "SP"	II-8
1.64	"Signaling System 7" or "SS7"	II-8
1.65	"Signal Transfer Point" or "STP"	II-8
1.66	"Subsidiary"	II-8
1.67	"Synchronous Optical Network" or "SONET"	II-9
1.68	"Switched Access Service"	II-9
1.69	"Telecommunications Services"	II-9
1.70	"Third Party Contamination"	II-9
1.71	"Two-Way Wireless Mobile Telecommunications Service Provider"	II-9
1.72	"Undefined Terms"	II-9
1.73	"Vertical Features" (including "CLASS Features")	II-9

1.74	<u>"Wire Center"</u>	II-9
------	----------------------	------

ARTICLE III

	<u>GENERAL PROVISIONS</u>	III-1
1.	<u>Scope of General Provisions</u>	III-1
2.	<u>Term and Termination</u>	III-1
2.1	<u>Term</u>	III-1
2.2	<u>Post-Termination Arrangements</u>	III-1
2.3	<u>Termination Upon Default</u>	III-1
2.4	<u>Termination Upon Sale</u>	III-2
2.5	<u>Liability upon Termination</u>	III-2
3.	<u>Amendments</u>	III-2
4.	<u>Assignment</u>	III-2
5.	<u>Authority</u>	III-2
6.	<u>Billing and Payment</u>	III-2
6.1	<u>Billing</u>	III-2
6.2	<u>Dispute</u>	III-3
6.3	<u>Late Payment Charge</u>	III-3
6.4	<u>Audits</u>	III-3
7.	<u>Binding Effect</u>	III-3
8.	<u>Compliance with Laws and Regulations</u>	III-3
9.	<u>Confidential Information</u>	III-3
9.1	<u>Identification</u>	III-3
9.2	<u>Handling</u>	III-4
9.3	<u>Exceptions</u>	III-5
9.4	<u>Survival</u>	III-5
10.	<u>Consent</u>	III-5
11.	<u>Cooperation on Fraud Minimization</u>	III-5
12.	<u>Dispute Resolution</u>	III-5
12.1	<u>Alternative to Litigation</u>	III-5
12.2	<u>Negotiations</u>	III-5

12.3	<u>Arbitration</u> .....	III-6
12.4	<u>Expedited Arbitration Procedures</u> .....	III-6
12.5	<u>Costs</u> .....	III-7
12.6	<u>Continuous Service</u> .....	III-7
13.	<u>Entire Agreement</u> .....	III-7
14.	<u>Expenses</u> .....	III-7
15.	<u>Force Majeure</u> .....	III-7
16.	<u>Good Faith Performance</u> .....	III-8
17.	<u>Governing Law</u> .....	III-8
18.	<u>Standard Practices</u> .....	III-8
19.	<u>Headings</u> .....	III-8
20.	<u>Independent Contractor Relationship</u> .....	III-8
21.	<u>Law Enforcement Interface</u> .....	III-8
22.	<u>Liability and Indemnity</u> .....	III-9
22.1	<u>Indemnification</u> .....	III-9
22.2	<u>End User and Content-Related Claims</u> .....	III-9
22.3	<u>DISCLAIMER</u> .....	III-10
22.5	<u>Intellectual Property</u> .....	III-10
23.	<u>Multiple Counterparts</u> .....	III-11
24.	<u>No Offer</u> .....	III-11
25.	<u>No Third Party Beneficiaries</u> .....	III-11
26.	<u>Notices</u> .....	III-11
27.	<u>Protection</u> .....	III-12
27.1	<u>Impairment of Service</u> .....	III-12
27.2	<u>Resolution</u> .....	III-12
28.	<u>Publicity</u> .....	III-12

RS

29.	<u>Regulatory Agency Control</u> .....	III-12
30.	<u>Changes in Legal Requirements</u> .....	III-12
31.	<u>Effective Date</u> .....	III-13
32.	<u>Regulatory Matters</u> .....	III-13
33.	<u>Rule of Construction</u> .....	III-13
34.	<u>Section References</u> .....	III-13
35.	<u>Service Standards</u> .....	III-13
36.	<u>Severability</u> .....	III-13
37.	<u>Subcontractors</u> .....	III-13
38.	<u>Subsequent Law</u> .....	III-14
39.	<u>Taxes</u> .....	III-14
40.	<u>Trademarks and Trade Names</u> .....	III-15
41.	<u>Waiver</u> .....	III-15
42.	<u>Environmental Responsibility</u> .....	III-15

ARTICLE IV

INTERCONNECTION AND TRANSPORT AND TERMINATION OF TRAFFIC

.....	IV-1
1. <u>Services Covered by This Article</u> .....	IV-1
1.1 <u>Types of Services</u> .....	IV-1
1.2 <u>Service Locations for Interconnection Services and Facilities</u> .....	IV-1
1.3 <u>Additional Services or Service Locations</u> .....	IV-1
2. <u>Billing and Rates</u> .....	IV-1
2.1 <u>Rates and Charges</u> .....	IV-1
3. <u>Transport and Termination of Traffic</u> .....	IV-2
3.1 <u>Traffic to be Exchanged</u> .....	IV-2
3.2 <u>Compensation For Exchange Of Traffic</u> .....	IV-2

*RS*

3.3	<u>Tandem Switching Services (Transiting)</u> .....	IV-2
3.4	<u>Inter-Tandem Switching</u> .....	IV-3
4.	<u>Direct Network Interconnection</u> .....	IV-3
4.1	<u>Network Interconnection Architecture</u> .....	IV-3
4.2	<u>Compensation</u> .....	IV-4
4.3	<u>Trunking Requirements</u> .....	IV-5
4.4	<u>Network Redesigns Initiated by GTE</u> .....	IV-6
4.5	<u>Interconnection Calling and Called Scopes for the Access Tandem Interconnection and the End Office Interconnection.</u> .....	IV-7
5.	<u>Indirect Network Interconnection</u> .....	IV-7
6.	<u>Number Resources</u> .....	IV-7
6.1	<u>NXX Number Assignment</u> .....	IV-7
6.2	<u>Blocks of 100 Numbers Assignment</u> .....	IV-7
6.3	<u>Rate Centers</u> .....	IV-8
6.4	<u>Routing Points</u> .....	IV-8
6.5	<u>Code and Numbers Administration</u> .....	IV-8
6.6	<u>Programming Switches</u> .....	IV-9
7.	<u>Meet-Point Billing</u> .....	IV-9
7.1	<u>Meet-Point Arrangements</u> .....	IV-9
7.2	<u>Compensation</u> .....	IV-10
8.	<u>Common Channel Signaling</u> .....	IV-10
8.1	<u>Service Description</u> .....	IV-10
8.2	<u>Signaling Parameters</u> .....	IV-11
8.3	<u>Privacy Indicators</u> .....	IV-11
8.4	<u>Connection Through STP</u> .....	IV-11
8.5	<u>Third Party Signaling Providers</u> .....	IV-11
8.6	<u>Multi-Frequency Signaling</u> .....	IV-11
9.	<u>Service Quality and Performance</u> .....	IV-11
10.	<u>Network Outages</u> .....	IV-11
11.	<u>Transition and Implementation</u> .....	IV-12
ARTICLE V		
<u>ADDITIONAL SERVICES AND COORDINATED SERVICE ARRANGEMENTS</u>		
	.....	V-1

*RS*

1.	<u>Misdirected Calls</u> .....	V-1
2.	<u>911 Arrangements</u> .....	V-1
	2.1 <u>Description of Service</u> .....	V-1
	2.3 <u>Cooperation and Level of Performance</u> .....	V-1
	2.4 <u>Enhanced 911 (E911)</u> .....	V-1
3.	<u>Information Services Traffic</u> .....	V-2
	3.1 <u>Routing</u> .....	V-2
	3.2 <u>Recording</u> .....	V-2
	3.3 <u>Rating</u> .....	V-2
	3.4 <u>Billing and Collection</u> .....	V-2
	3.5 <u>Blocking</u> .....	V-2
ARTICLE VI		
	<u>COLLOCATION</u> .....	VI-1
1.	<u>Physical Collocation</u> .....	VI-1
APPENDIX A		
	<u>SERVICE MATRIX</u> .....	A-1
APPENDIX B		
	<u>SERVICE ATTACHMENTS</u> .....	B-1
APPENDIX C		
	<u>RATES AND CHARGES FOR TRANSPORT AND TERMINATION OF TRAFFIC</u> .....	C-1

This Interconnection Agreement (the "Agreement"), is entered into by and between GTE South Incorporated, with its address for purposes of this Agreement at 600 Hidden Ridge Drive, Irving, Texas 75038 ("GTE"), and Bluegrass Cellular Inc. for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership and Cumberland Cellular Partnership, in its capacity as a provider of two-way wireless service ("Bluegrass"), with its address for this Agreement at 2902 Ring Road, Elizabethtown, Kentucky 42701 (GTE and Bluegrass being referred to collectively as the "Parties" and individually as a "Party"). This Agreement covers services in the state of Kentucky only (the "State").

WHEREAS, interconnection between local providers is necessary and desirable for the mutual exchange and termination of traffic originating on each local providers' network; and

WHEREAS, the Parties desire to exchange such traffic and related signaling in a technically and economically efficient manner at defined and mutually agreed upon interconnection points; and

WHEREAS, the Parties wish to enter into an agreement to interconnect their respective telecommunications networks on terms that are fair and equitable to both Parties; and

WHEREAS, Section 251 of the Telecommunications Act of 1996 (the "Act") imposes specific obligations on LECs with respect to the interconnection of their networks and physical collocation of equipment in LEC premises;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GTE and Bluegrass hereby covenant and agree as follows:

ARTICLE I  
SCOPE AND INTENT OF AGREEMENT

Pursuant to this Agreement, the Parties will extend certain arrangements to one another within each area in which they both operate within the State for purposes of interconnection and the exchange of traffic between their respective end user customers. This Agreement also governs the collocation of certain equipment of Bluegrass in the premises of GTE. This Agreement is an integrated package that reflects a balancing of interests critical to the Parties. This Agreement will be submitted to the Kentucky Public Service Commission (the "Commission") for approval. The Parties agree that their entrance into this Agreement is without prejudice to and does not waive any positions they may have taken previously, or may take in the future, in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related to the same types of arrangements and/or matters related to GTE's cost recovery covered in this Agreement.

The services and facilities to be provided to Bluegrass by GTE in satisfaction of this Agreement may be provided pursuant to GTE tariffs and then current practices. Should such services and facilities be modified by tariff or by Order, including any modifications resulting from other Commission proceedings, federal court review or other judicial action, such modifications will be deemed to automatically supersede any rates and terms and conditions of this Agreement. GTE will provide notification to Bluegrass before such a tariff becomes effective, and Bluegrass may provide input on such proposed tariff. The Parties shall cooperate with one another for the purpose of incorporating required modifications into this agreement.

## ARTICLE II DEFINITIONS

1. General Definitions. Except as otherwise specified herein, the following definitions shall apply to all Articles and Appendices contained in this Agreement. Additional definitions that are specific to the matters covered in a particular Article may appear in that Article. To the extent that there may be any conflict between a definition set forth in this Article II and any definition in a specific Article or Appendix, the definition set forth in the specific Article or Appendix shall control with respect to that Article or Appendix.
- 1.1 "Act" means the Telecommunications Act of 1996, Public Law 104-104 of the 104th United States Congress effective February 8, 1996.
- 1.2 "Affiliate" of a Party means a person, corporation or other legal entity that, directly or indirectly, owns or controls a Party, or is owned or controlled by, or is under common ownership or control with a Party.
- 1.3 "AMA" means the Automated Message Accounting structure inherent in switch technology that initially records telecommunication message information. AMA format is contained in the Automated Message Accounting document, published by Bellcore as GR-1100-CORE which defines the industry standard for message recording.
- 1.4 "Answer Supervision" means an off-hook supervisory signal.
- 1.5 "Applicable Law" shall mean all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, permits, and approvals of any Governmental Authority, which apply or relate to the subject matter of this Agreement.
- 1.6 "Automatic Number Identification" or "ANI" refers to the number transmitted through the network identifying the calling party.
- 1.7 "Bellcore" means an organization owned jointly by the Bell regional holding companies and that may in the future be owned partially or totally by other persons, that conducts research and development projects for its owners, including development of new telecommunications services. Bellcore also provides certain centralized technical and management services for the regional holding companies and also provides generic requirements for the telecommunications industry for products, services and technologies.

- 1.8 **"Business Day"** shall mean Monday through Friday, except for holidays on which the U.S. mail is not delivered.
- 1.9 **"Central Office Switch"** means a switch used to provide telecommunications services including (i) **"End Office Switches"** which are Class 5 switches from which end user Exchange Services are directly connected and offered, and (ii) **"Tandem Office Switches"** which are Class 4 switches which are used to connect and switch trunk circuits between and among central office switches. Central office switches may be employed as combination end office/tandem office switches (combination Class 5/Class 4).
- 1.10 **"Centralized Message Distribution System" (CMDS)** means the billing record and clearing house transport system that the Regional Bell Operating Companies ("RBOCs") and other incumbent LECs use to efficiently exchange out collects and in collects as well as Carrier Access Billing System ("CABS") records.
- 1.11 **"CLLI codes"** means Common Language Location Identifier Codes.
- 1.12 **"Commercial Mobile Radio Services" (CMRS)** means a radio communication service between mobile stations or receivers and land stations, or by mobile stations communicating among themselves that is provided for profit and that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.
- 1.13 **"Commission"** means the Public Utilities/Public Service Commission of the state in which this agreement is filed.
- 1.14 **"Common Channel Signaling" or "CCS"** means a high-speed specialized packet-switched communications network that is separate (out-of-band) from the public packet-switched and message networks. CCS carries addressed signaling messages for individual trunk circuits and/or database-related services between Signaling Points in the CCS network using SS7 signaling protocol.
- 1.15 **"Competitive Local Exchange Carrier" (CLEC)** means any company or person authorized to provide local exchange services in competition with an ILEC.
- 1.16 **"Compliance"**, when used in Article III, Section 42, means environmental and safety laws and regulations are based upon a federal regulatory framework, with certain responsibilities delegated to the States. An environmental/safety

compliance program may include review of applicable laws/regulations, development of written procedures, training of employees and auditing.

- 1.17 **"Conversation Time"** means the time that both Parties' equipment is used for a completed call, measured from the receipt of answer supervision to the receipt of disconnect supervision.
- 1.18 **"Customer"** may mean GTE or Bluegrass depending on the context and which Party is receiving the service from the other Party.
- 1.19 **"Customer Usage Data"** means that the local telecommunications services usage data of a Bluegrass customer, measured in conversation minutes, sub-minute increments, message units, or otherwise, that is recorded and exchanged by the Parties.
- 1.20 **"DS-1"** is a digital signal rate of 1.544 Mbps.
- 1.21 **"DS-3"** is a digital signal rate of 44.736 Mbps.
- 1.22 **"Disconnect Supervision"** means an on-hook supervisory signal sent at the completion of a call.
- 1.23 **"Electronic File Transfer"** refers to a system or process which utilizes an electronic format and protocol to send/receive data files.
- 1.24 **"EMR"** means the Exchange Message Record which is an industry standard record used to exchange telecommunications message information among local providers for billable, non-billable, sample, settlement and study data. EMR format is defined in BR-010-200-010 CRIS Exchange Message Record, published by Bellcore and which defines the industry standard for exchange message records.
- 1.25 **"Exchange Service"** refers to all basic access line services, or any other services offered to end users which provide end users with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network ("PSTN"), and which enable such end users to place or receive calls to all other stations on the PSTN.
- 1.26 **"EIS" or "Expanded Interconnection Service"** means a service that provides interconnecting carriers with the capability to terminate basic fiber optic transmission facilities, including optical terminating equipment and multiplexers, at GTE's wire centers and access tandems and interconnect

those facilities with the facilities of GTE. Microwave is available on a case-by-case basis where feasible.

- 1.27 **"Facility"** means all buildings, equipment, structures and other items located on a single site or contiguous or adjacent sites owned or operated by the same persons or person, when used in Article III, Section 42.
- 1.28 **"FCC"** means the Federal Communications Commission.
- 1.29 **"Generator"** means under Resource Conservation Recovery Act (RCRA), the person whose act produces a hazardous waste (40 CFR 261) or whose act first causes a hazardous waste to become subject to regulation. The generator is legally responsible for the proper management and disposal of hazardous wastes in accordance with regulations.
- 1.30 **"GTOC"** means GTE Telephone Operating Company.
- 1.31 **"Hazardous Chemical"** means as defined in the U.S. Occupational Safety and Health (OSHA) hazard communication standard (29 CFR 1910.1200), any chemical which is a health hazard or physical hazard.
- 1.32 **"Hazardous Waste"** means as described in Resource Conservation and Recovery Act (RCRA), a solid waste(s) which may cause, or significantly contribute to an increase in mortality or illness or pose a substantial hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed because of its quantity, concentration or physical or chemical characteristics.
- 1.33 **"Imminent Danger"** means as described in the Occupational Safety and Health Act and expanded for environmental matters, any conditions or practices at a facility which are such that a danger exists which could reasonably be expected to cause death or serious harm or significant damage to the environment or natural resources.
- 1.34 **"Incumbent Local Exchange Carrier" (ILEC)** means any local exchange carrier that was as of February 8, 1996, deemed to be a member of the Exchange Carrier Association as set forth in 47 C.F.R. §69.601(b) of the FCC's regulations.
- 1.35 **"Interconnection Point" ("IP")** means the physical point on the network where the two parties interconnect. The "IP" is the demarcation point between ownership of the transmission facility.

- 1.36 **"ISDN User Part (ISUP)"** means a part of the SS7 protocol that defines call setup messages and call takedown messages.
- 1.37 **"IXC" or "Interexchange Carrier"** means a telecommunications service provider authorized by the FCC to provide interstate long distance communications services between LATAs and are authorized by the State to provide inter- and/or intraLATA long distance communications services within the State.
- 1.38 **"Internetwork Facilities" or "Interconnection Facility"** means the physical connection of separate pieces of equipment, transmission facilities, etc., within, between and among networks, for the transmission and routing of exchange service and exchange access.
- 1.39 **"LATA"** means Local Access and Transport Area. A LATA denotes a geographic area for the provision and administration of communications service; *i.e.*, intraLATA or interLATA.
- 1.40 **"Line Information Data Base (LIDB)"** means one or all, as the context may require, of the Line Information databases owned individually by GTE and other entities which provide, among other things, calling card validation functionality for telephone line number cards issued by GTE and other entities. A LIDB also contains validation data for collect and third number-billed calls; *i.e.*, Billed Number Screening.
- 1.41 **"Local Exchange Carrier" or "LEC"** means any company certified by the Commission to provide local exchange telecommunications service.
- 1.42 **"Local Exchange Routing Guide" or "LERG"** means the Bellcore reference customarily used to identify NPA-NXX routing and homing information, as well as network element and equipment designation.
- 1.43 **"local provider"** is used in this Agreement as a generic reference to any provider of local services, *i.e.*, ILECs, CLECs, CMRS Carriers. This includes the Parties to this Agreement.
- 1.44 **"Local Traffic"**, for purposes of compensation between Parties, means traffic that is originated by an end user of one Party and terminates to the end user of the other Party within the same MTA (Major Trading Area) and, for GTE-originated traffic, within the same LATA, provided that the end user of Bluegrass receives service on a wireless, mobile basis. Local Traffic excludes Information Service Providers ("ISP") traffic (*e.g.*, Internet, paging, 900-976, etc.).

- 1.45 **"Meet-Point Billing" or "MPB"** refers to an arrangement whereby two local providers jointly provide the transport element of a switched access service to one of the local provider's end office switches, with each local provider receiving an appropriate share of the transport element revenues as defined by their effective access tariffs.
- 1.46 **"MECAB"** refers to the *Multiple Exchange Carrier Access Billing* ("MECAB") document prepared by the Billing Committee of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECAB document, published by Bellcore as Special Report SR-BDS-000983, contains the recommended guidelines for the billing of an access service provided by two or more local providers, or by one local provider in two or more states within a single LATA.
- 1.47 **"MECOD"** refers to the *Multiple Exchange Carriers Ordering and Design* ("MECOD") *Guidelines for Access Services - Industry Support Interface*, a document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum ("OBF"), which functions under the auspices of the Carrier Liaison Committee ("CLC") of the Alliance for Telecommunications Industry Solutions ("ATIS"). The MECOD document, published by Bellcore as Special Report SR-STS-002643, establish methods for processing orders for access service which is to be provided by two or more local providers.
- 1.48 **"Mid-Span Fiber Meet"** means an Interconnection architecture whereby two carriers' fiber transmission facilities meet at a mutually agreed-upon POI.
- 1.49 **"MSC" or "MTSO"** means the Mobile Switching Center or Mobile Telecommunications Switching Office used by a CMRS carrier in performing originating and terminating functions for calls to or from end user customers of the CMRS carrier.
- 1.50 **"MTA"** means Major Trading Area as defined by the FCC rules, Part 24.202(a).
- 1.51 **"NANP"** means the "North American Numbering Plan", the system of telephone numbering employed in the United States, Canada, and the Caribbean countries that employ NPA 809.
- 1.52 **"Numbering Plan Area" or "NPA"** is also sometimes referred to as an area code. This is the three digit indicator which is defined by the "A", "B", and "C" digits of each 10-digit telephone number within the NANP. Each NPA contains

800 possible NXX Codes. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access Code" or "SAC Code" is typically associated with a specialized telecommunications service which may be provided across multiple geographic NPA areas. 800, 900, 700, and 888 are examples of Non-Geographic NPAs.

- 1.53 **"NXX", "NXX Code", "Central Office Code" or "CO Code"** is the three digit switch entity indicator which is defined by the "D", "E", and "F" digits of a 10-digit telephone number within the NANP. Each NXX Code contains 10,000 station numbers.
- 1.54 **"911 Service"** means a universal telephone number which gives the public direct access to the PSAP. Basic 911 service collects 911 calls from one or more local exchange switches that serve a geographic area. The calls are then sent to the correct authority designated to receive such calls.
- 1.55 **"Owner" and "Operator"** means as used in OSHA regulations, owner is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building or facility. As used in the Resource Conservation and Recovery Act (RCRA), operator means the person responsible for the overall (or part of the) operations of a facility.
- 1.56 **"POI"** means Point of Interconnection designated for routing of local interconnection trunks.
- 1.57 **"Provider"** may mean GTE or Bluegrass depending on the context and which Party is providing the service to the other Party.
- 1.58 **"Public Safety Answering Point" or "PSAP"** means an answering location for 9-1-1 calls originating in a given area. A PSAP may be designated as Primary or Secondary, which refers to the order in which calls are directed for answering. Primary PSAPs respond first; Secondary PSAPs receive calls on a transfer basis only, and generally serve as a centralized answering location for a particular type of emergency call. PSAPs are staffed by employees of Emergency Response Agencies ("ERAs") such as police, fire or emergency medical agencies or by employees of a common bureau serving a group of such entities.
- 1.59 **"Rate Center"** means the specific geographic point and corresponding geographic area that are associated with one or more particular NPA-NXX

Codes that have been assigned to a local provider for its provision of Exchange Services. The geographic point is identified by a specific Vertical and Horizontal ("V&H") coordinate that is used to calculate distance-sensitive end user traffic to/from the particular NPA-NXXs associated with the specific Rate Center.

- 1.60 **"Routing Point"** denotes a location that a local provider has designated on its network as the homing (routing) point for traffic that terminates to Exchange Services provided by the local provider that bear a certain NPA-NXX designation. The Routing Point is used to calculate airline mileage for the distance-sensitive transport element charges of Switched Access Services. Pursuant to Bellcore Practice BR795-100-100, the Routing Point may be an end office location, or a "LEC Consortium Point of Interconnection." The Routing Point must be in the same LATA as the associated NPA-NXX.
- 1.61 **"Service Control Point" or "SCP"** is the node in the signaling network to which informational requests for service handling, such as routing, are directed and processed. The SCP is a real time database system that, based on a query from the SSP, performs subscriber or application-specific service logic, and then sends instructions back to the SSP on how to continue call processing.
- 1.62 **"Service Switching Point" or "SSP"** means a Signaling Point that can launch queries to databases and receive/interpret responses used to provide specific customer services.
- 1.63 **"Signaling Point" or "SP"** means a node in the CCS network that originates and/or receives signaling messages, or transfers signaling messages from one signaling link to another, or both.
- 1.64 **"Signaling System 7" or "SS7"** means the signaling protocol, Version 7, of the CCS network, based upon American National Standards Institute ("ANSI") standards.
- 1.65 **"Signal Transfer Point" or "STP"** means a packet switch in the CCS network that is used to route signaling messages among SSPs, SCPs and other STPs in order to set up calls and to query databases for advanced services. GTE's network includes mated pairs of local and regional STPs. STPs are provided in pairs for redundancy. GTE STPs conform to ANSI T1.111-8 standards.
- 1.66 **"Subsidiary"** of a Party means a corporation or other legal entity that is majority owned by such Party.

- 1.67 **"Synchronous Optical Network" or "SONET"** means synchronous electrical ("STS") or optical channel ("OC") connections between local providers.
- 1.68 **"Switched Access Service"** means the offering of facilities for the purpose of the origination or termination of traffic to or from Exchange Service customers in a given area pursuant to a switched access tariff. Switched Access Services include: Feature Group A, Feature Group B, Feature Group C, Feature Group D, 800 access and 900 access services.
- 1.69 **"Telecommunications Services"** means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
- 1.70 **"Third Party Contamination"** means environmental pollution that is not generated by GTE or Bluegrass but results from off-site activities impacting a facility.
- 1.71 **"Two-Way Wireless Mobile Telecommunications Service Provider"** means a CMRS provider of telephone exchange and exchange access services. CMRS providers are authorized pursuant to 47 U.S.C. § 332 (d) (1) as interpreted by the FCC and the federal courts.
- 1.72 **"Undefined Terms"** means the Parties acknowledge that terms may appear in this Agreement which are not defined and agree that any such terms shall be construed in accordance with their customary usage in the telecommunications industry as of the effective date of this Agreement.
- 1.73 **"Vertical Features" (including "CLASS Features")** means vertical services and switch functionalities provided by GTE, including: Automatic Call Back; Automatic Recall; Call Forwarding Busy Line/Don't Answer; Call Forwarding Don't Answer; Call Forwarding Variable; Call Forwarding - Busy Line; Call Trace; Call Waiting; Call Number Delivery Blocking Per Call; Calling Number Blocking Per Line; Cancel Call Waiting; Distinctive Ringing/Call Waiting; Incoming Call Line Identification Delivery; Selective Call Forward; Selective Call Rejection; Speed Calling; and Three Way Calling/Call Transfer.
- 1.74 **"Wire Center"** means a building or space within a building that serves as an aggregation point on a local provider's network, where transmission facilities and circuits are connected or switched. "Wire center" can also denote a building in which one or more Central Offices, used for the provision of exchange services and access services, are located.

ARTICLE III  
GENERAL PROVISIONS

1. Scope of General Provisions. Except as may otherwise be set forth in a particular Article or Appendix of this Agreement, in which case the provisions of such Article or Appendix shall control, these General Provisions apply to all Articles and Appendices of this Agreement.
  
2. Term and Termination.
  - 2.1 Term. Subject to the termination provisions contained in this Agreement, the term of this Agreement shall be one (1) year from the effective date of this Agreement and shall continue in effect for consecutive six (6) month terms until either Party gives the other Party at least ninety (90) calendar days written notice of termination, which termination shall be effective at the end of the then-current term. In the event notice is given less than 90 calendar days prior to the end of the current term, this Agreement shall remain in effect for 90 calendar days after such notice is received, provided, that in no case shall the term be extended beyond 90 calendar days after the end of the current term.
  
  - 2.2 Post-Termination Arrangements. Except in the case of termination as a result of either Party's default or a termination upon sale, for service arrangements made available under this Agreement and existing at the time of termination, those arrangements may continue without interruption (a) under a new agreement voluntarily executed by the Parties; (b) standard terms and conditions approved and made generally effective by the Commission, if any; (c) tariff terms and conditions made generally available to all local providers; or (d) any rights under Section 252(I) of the Act.
  
  - 2.3 Termination Upon Default. Either Party may terminate this Agreement in whole or in part in the event of a default by the other Party; *provided however*, that the non-defaulting Party notifies the defaulting party in writing of the alleged default and that the defaulting Party does not cure the alleged default within sixty (60) calendar days of receipt of written notice thereof. Default is defined to include:
    - (a) A Party's insolvency or the initiation of bankruptcy or receivership proceedings by or against the Party; or
  
    - (b) A Party's refusal or failure in any material respect properly to perform its obligations under this Agreement, or the violation any of the material terms or conditions of this Agreement.

- 2.4 Termination Upon Sale. Notwithstanding anything to the contrary contained herein, a Party may terminate this Agreement as to a specific operating area or portion thereof of such Party if such Party sells or otherwise transfers the area or portion thereof. The Party shall provide the other Party with at least ninety (90) calendar days' prior written notice of such termination, which shall be effective on the date specified in the notice. Notwithstanding termination of this Agreement as to a specific operating area, this Agreement shall remain in full force and effect in the remaining operating areas.
- 2.5 Liability upon Termination. Termination of this Agreement, or any part hereof, for any cause shall not release either Party from any liability which at the time of termination had already accrued to the other Party or which thereafter accrues in any respect to any act or omission occurring prior to the termination or from an obligation which is expressly stated in this Agreement to survive termination.
3. Amendments. Any amendment, modification, or supplement to this Agreement must be in writing and signed by an authorized representative of each Party. The term "this Agreement" shall include future amendments, modifications, and supplements.
4. Assignment. Any assignment by either Party of any right, obligation, or duty, in whole or in part, or of any interest, without the written consent of the other Party shall be void, except that either Party may assign all of its rights, and delegate its obligations, liabilities and duties under this Agreement, either in whole or in part, to any entity that is, or that was immediately preceding such assignment, a Subsidiary or Affiliate of that Party without consent, but with written notification. The effectiveness of an assignment shall be conditioned upon the assignee's written assumption of the rights, obligations, and duties of the assigning Party.
5. Authority. Each person whose signature appears on this Agreement represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.
6. Billing and Payment.
- 6.1 Billing. Charges provided for on the Service Attachments shall be billed monthly. Parties agree to pay all charges specified on the Service Attachments within thirty (30) calendar days of the bill date as printed on the face of the bill. Parties shall not bill for services provided pursuant to this Agreement more than six (6) months prior to the date of the bill unless notification of a billing problem with respect to such services has been

provided. In those circumstances, back-billing shall be limited to six (6) months prior to the date Parties were notified of the billing problem. Parties shall not submit a claim regarding bills more than six (6) months after the bill date or six (6) months after the date of notification of a billing problem.

- 6.2 Dispute. If Customer disputes a billing statement, Customer shall notify Provider in writing regarding the nature and the basis of the dispute within six (6) months of the statement date or the dispute shall be waived. Provider and Customer shall diligently work toward resolution of all billing issues.
- 6.3 Late Payment Charge. If any undisputed amount due on the billing statement is not received by Provider on the payment due date, Provider may charge, and Customer agrees to pay, interest on the past due balance at a rate equal to the rate set forth in the GTE/Contel state access tariff or the GTOC/GSTC FCC No. 1 tariff referenced in the applicable service attachment. Late payment charges shall be included on the next statement.
- 6.4 Audits. Either Party may conduct an audit of the other Party's books and records pertaining to the Services provided under this Agreement, no more frequently than once per twelve (12) month period, to evaluate the other Party's accuracy of billing, data and invoicing in accordance with this Agreement. Any audit shall be performed as follows: (i) following at least ninety (90) Business Days' prior written notice to the audited Party; (ii) subject to the reasonable scheduling requirements and limitations of the audited Party; (iii) at the auditing Party's sole cost and expense; (iv) of a reasonable scope and duration; (v) in a manner so as not to interfere with the audited Party's business operations; and (vi) in compliance with the audited Party's security rules.
7. Binding Effect. This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assigns of the Parties.
8. Compliance with Laws and Regulations. Each Party shall comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement.
9. Confidential Information.
- 9.1 Identification. Either Party may disclose to the other proprietary or confidential customer, technical, or business information in written, graphic, oral or other tangible or intangible forms ("Confidential Information"). In order for information to be considered Confidential Information under this Agreement, it

must be marked "Confidential" or "Proprietary," or bear a marking of similar import. Orally or visually disclosed information shall be deemed Confidential Information only if contemporaneously identified as such and reduced to writing and delivered to the other Party with a statement or marking of confidentiality within thirty (30) calendar days after oral or visual disclosure.

Notwithstanding the foregoing, all preorders and orders for Services placed by Bluegrass pursuant to this Agreement, and information that would constitute customer proprietary network information of Bluegrass end user customers pursuant to the Act and the rules and regulations of the FCC, as well as recorded usage information with respect to Bluegrass end users, whether disclosed by Bluegrass to GTE or otherwise acquired by GTE in the course of its performance under this Agreement, and where GTE is the NANP Number Plan Administrator, Bluegrass information submitted to GTE in connection with such responsibilities shall be deemed Confidential Information of Bluegrass for all purposes under this Agreement whether or not specifically marked or designated as confidential or proprietary.

9.2 Handling. In order to protect such Confidential Information from improper disclosure, each Party agrees:

- (a) That all Confidential Information shall be and shall remain the exclusive property of the source;
- (b) To limit access to such Confidential Information to authorized employees who have a need to know the Confidential Information for performance of this Agreement;
- (c) To keep such Confidential Information confidential and to use the same level of care to prevent disclosure or unauthorized use of the received Confidential Information as it exercises in protecting its own Confidential Information of a similar nature;
- (d) Not to copy, publish, or disclose such Confidential Information to others or authorize anyone else to copy, publish, or disclose such Confidential Information to others without the prior written approval of the source;
- (e) To return promptly any copies of such Confidential Information to the source at its request; and
- (f) To use such Confidential Information only for purposes of fulfilling work or services performed hereunder and for other purposes only upon such terms as may be agreed upon between the Parties in writing.

- 9.3 Exceptions. These obligations shall not apply to any Confidential Information that was legally in the recipient's possession prior to receipt from the source, was received in good faith from a third party not subject to a confidential obligation to the source, now is or later becomes publicly known through no breach of confidential obligation by the recipient, was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however, that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.
- 9.4 Survival. The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.
10. Consent. Where consent, approval, or mutual agreement is required of a Party, it shall not be unreasonably withheld or delayed.
11. Cooperation on Fraud Minimization. Bluegrass assumes responsibility for all fraud associated with its end user customers and accounts. GTE shall have no responsibility for, nor is it required to investigate or make adjustments to Bluegrass's account in cases of fraud. The Parties agree that they shall cooperate with one another to resolve cases of fraud. The Parties' fraud minimization procedures are to be cost effective and implemented so as not to unduly burden or harm one Party as compared to the other.
12. Dispute Resolution.
- 12.1 Alternative to Litigation. Except as provided under Section 252 of the Act with respect to the approval of this Agreement by the Commission, the Parties desire to resolve disputes arising out of or relating to this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following alternative dispute resolution procedures as their sole remedy with respect to any controversy or claim arising out of or relating to this Agreement or its breach.
- 12.2 Negotiations. At the written request of a Party, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith

to resolve any dispute arising out of or relating to this Agreement. The Parties intend that these negotiations be conducted by non-lawyer, business representatives. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as confidential information developed for purposes of settlement, exempt from discovery, and shall not be admissible in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared for purposes of the negotiations, are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

12.3 Arbitration. If the negotiations do not resolve the dispute within sixty (60) Business Days of the initial written request, the dispute shall be submitted to binding arbitration by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association except that the Parties may select an arbitrator outside American Arbitration Association rules upon mutual agreement. A Party may demand such arbitration in accordance with the procedures set out in those rules. Discovery shall be controlled by the arbitrator and shall be permitted to the extent set out in this section. Each Party may submit in writing to a Party, and that Party shall so respond to, a maximum of any combination of thirty-five (35) (none of which may have subparts) of the following: interrogatories, demands to produce documents, or requests for admission. Each Party is also entitled to take the oral deposition of one individual of another Party. Additional discovery may be permitted upon mutual agreement of the Parties. The arbitration hearing shall be commenced within sixty (60) Business Days of the demand for arbitration. The arbitration shall be held in Dallas County, Texas or another location mutually agreed upon by the Parties. The arbitrator shall control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs. The arbitrator shall rule on the dispute by issuing a written opinion within thirty (30) Business Days after the close of hearings. The times specified in this section may be extended upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

12.4 Expedited Arbitration Procedures. If the issue to be resolved through the negotiations referenced in Section 12.2 directly and materially affects service to either Party's end user customers, then the period of resolution of the dispute through negotiations before the dispute is to be submitted to binding

arbitration shall be five (5) Business Days. Once such a service affecting dispute is submitted to arbitration, the arbitration shall be conducted pursuant to the expedited procedures rules of the Commercial Arbitration Rules of the American Arbitration Association (i.e., rules 53 through 57).

- 12.5 Costs. Each Party shall bear its own costs of these procedures. A Party seeking discovery shall reimburse the responding Party the costs of production of documents (including search time and reproduction costs). The Parties shall equally split the fees of the arbitration and the arbitrator.
- 12.6 Continuous Service. The Parties shall continue providing services to each other during the pendency of any dispute resolution procedure, and the Parties shall continue to perform their obligations in accordance with this Agreement.
13. Entire Agreement. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, negotiations, proposals, and representations, whether written or oral, and all contemporaneous oral agreements, negotiations, proposals, and representations concerning such subject matter. No representations, understandings, agreements, or warranties, expressed or implied, have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
14. Expenses. Except as specifically set out in this Agreement, each Party shall be solely responsible for its own expenses involved in all activities related to the subject of this Agreement.
15. Force Majeure. In the event performance of this Agreement, or any obligation hereunder, is either directly or indirectly prevented, restricted, or interfered with by reason of fire, flood, earthquake or like acts of God, wars, revolution, civil commotion, explosion, acts of public enemy, embargo, acts of the government in its sovereign capacity, labor difficulties, including without limitation, strikes, slowdowns, picketing, or boycotts, unavailability of equipment from vendor, changes requested by Customer, or any other circumstances beyond the reasonable control and without the fault or negligence of the Party affected, the Party affected, upon giving prompt notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis until the delay, restriction or interference has ceased); *provided however*, that the Party so affected shall use diligent efforts to avoid or remove such causes of nonperformance and both Parties shall proceed whenever such causes are removed or cease.

16. Good Faith Performance. In the performance of their obligations under this Agreement, the Parties shall act in good faith. In situations in which notice, consent, approval or similar action by a Party is permitted or required by any provision of this Agreement, such action shall not be unreasonably delayed, withheld or conditioned.
17. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the state where the Services are provided or the facilities reside and shall be subject to the exclusive jurisdiction of the courts therein.
18. Standard Practices. The Parties acknowledge that GTE shall be adopting some industry standard approaches and/or establishing its own standard approaches to various requirements hereunder applicable. Bluegrass agrees that GTE may implement such approaches to satisfy any GTE obligations under this Agreement.
19. Headings. The headings in this Agreement are inserted for convenience and identification only and shall not be considered in the interpretation of this Agreement.
20. Independent Contractor Relationship. The persons provided by each Party shall be solely that Party's employees and shall be under the sole and exclusive direction and control of that Party. They shall not be considered employees of the other Party for any purpose. Each Party shall remain an independent contractor with respect to the other and shall be responsible for compliance with all laws, rules and regulations involving, but not limited to, employment of labor, hours of labor, health and safety, working conditions and payment of wages. Each Party shall also be responsible for payment of taxes, including federal, state and municipal taxes, chargeable or assessed with respect to its employees, such as Social Security, unemployment, workers' compensation, disability insurance, and federal and state withholding. Each Party shall indemnify the other for any loss, damage, liability, claim, demand, or penalty that may be sustained by reason of its failure to comply with this provision.
21. Law Enforcement Interface.
  - 21.1 Except to the extent not available in connection with GTE's operation of its own business, GTE shall provide seven day a week/twenty-four hour a day assistance to law enforcement persons for emergency traps, assistance involving emergency traces and emergency information retrieval on customer

invoked CLASS services, including, without limitation, call traces requested by Bluegrass

21.2 GTE agrees to work jointly with Bluegrass in security matters to support law enforcement agency requirements for taps, traces, court orders, etc. Charges for providing such services for Bluegrass Customers will be billed to Bluegrass.

21.3 GTE will, in non emergency situations, inform the requesting law enforcement agencies that the end-user to be wire tapped, traced, etc. is a Bluegrass Customer and shall refer them to Bluegrass.

22. Liability and Indemnity.

22.1 Indemnification. Subject to the limitations set forth in Section 22.4 of this Article III, each Each Party agrees to release, indemnify, defend, and hold harmless the other Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, whether suffered, made, instituted, or asserted by any other party or person, for invasion of privacy, personal injury to or death of any person or persons, or for losses, damages, or destruction of property, whether or not owned by others, proximately caused by the indemnifying Party's negligence or willful misconduct, regardless of form of action. The indemnified Party agrees to notify the other Party promptly, in writing, of any written claims, lawsuits, or demands for which it is claimed that the indemnifying Party is responsible under this Section and to cooperate in every reasonable way to facilitate defense or settlement of claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof. The indemnifying Party shall not be liable under this Section for settlement by the indemnified Party or any claim, lawsuit, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the claim, lawsuit, or demand tendered to it in writing and has failed to assume such defense. In the event of such failure to assume defense, the indemnifying Party shall be liable for any reasonable settlement made by the indemnified Party without approval of the indemnifying Party.

22.2 End User and Content-Related Claims. Each Party agrees to release, indemnify, defend, and hold harmless the other Party, its affiliates, and any third-party provider or operator of facilities involved in the provision of Services or Facilities under this Agreement (collectively, the "Indemnified Party") from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by either Party's end users against an Indemnified Party arising from Services or Facilities. Each Party further agrees

to release, indemnify, defend, and hold harmless the Indemnified Party from all losses, claims, demands, damages, expenses, suits, or other actions, or any liability whatsoever, including, but not limited to, costs and attorney's fees, suffered, made, instituted, or asserted by any third party against an Indemnified Party arising from or in any way related to actual or alleged defamation, libel, slander, interference with or misappropriation of proprietary or creative right, or any other injury to any person or property arising out of content transmitted by the Indemnified Party or such Party's end users, or any other act or omission of the Indemnified Party or such Party's end users.

22.3 **DISCLAIMER.** EXCEPT AS SPECIFICALLY PROVIDED TO THE CONTRARY IN THIS AGREEMENT, PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES TO CUSTOMER CONCERNING THE SPECIFIC QUALITY OF ANY SERVICES OR FACILITIES PROVIDED UNDER THIS AGREEMENT. PROVIDER DISCLAIMS, WITHOUT LIMITATION, ANY WARRANTY OR GUARANTEE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR FROM USAGES OF TRADE.

22.4 **Limitation of Liability.** Each Party's liability, whether in contract, tort or otherwise, shall be limited to direct damages, which shall not exceed the monthly charges for the Services or facilities for the month during which the claim of liability arose. Under no circumstance shall either Party be responsible or liable for indirect, incidental, or consequential damages, including, but not limited to, economic loss or lost business or profits, damages arising from the use or performance of equipment or software, or the loss of use of software or equipment, or any accessories attached thereto, delay, error, or loss of data. Should either Party provide advice, make recommendations, or supply other analysis related to the Services, unbundled network elements or facilities described in this Agreement, this limitation of liability shall apply to provision of such advice, recommendations, and analysis.

22.5 **Intellectual Property.** Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

23. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall together constitute but one and the same document.
24. No Offer. This Agreement will be effective only upon execution and delivery by both Parties and approval by the Commission in accordance with Section 252 of the Act.
25. No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.
26. Notices. Any notice to a Party required or permitted under this Agreement shall be in writing and shall be deemed to have been received on the date of service if served personally, on the date receipt is acknowledged in writing by the recipient if delivered by regular U.S. mail, or on the date stated on the receipt if delivered by certified or registered mail or by a courier service that obtains a written receipt. Upon prior immediate oral agreement of the parties' designated recipients identified below, notice may also be provided by facsimile which shall be effective if sent before 5:00 p.m. on that day, or if sent after 5:00 p.m. it will be effective on the next Business Day following the date sent. Any notice shall be delivered using one of the alternatives mentioned in this section and shall be directed to the applicable address indicated below or such address as the Party to be notified has designated by giving notice in compliance with this section:

If to GTE:

GTE South Incorporated  
Attention: Ms. Marceil M. Morrell  
AVP & Associate Counsel  
Mail Code FLTC0717  
201 N. Franklin  
Tampa, FL 33602  
Facsimile No. 813-279-9825

Copy to:

Director - Carrier Markets  
Mail Code HQE02L69  
GTE Telephone Operations  
600 Hidden Ridge Drive  
Irving, TX 75038

If to Bluegrass: Bluegrass Cellular, Inc.  
Attention: Network Planning Manager  
2902 Ring Road  
Elizabethtown, KY 42702  
Facsimile No. 502-737-0580

Copy to: Dinsmore & Shohl LLP  
Attention: Mr. John Selent  
2000 Meidinger Tower  
Louisville, KY 40202  
Facsimile No. 502-585-2450

27. Protection.

27.1 Impairment of Service. The characteristics and methods of operation of any circuits, facilities or equipment of either Party connected with the services, facilities or equipment of the other Party pursuant to this Agreement shall not interfere with or impair service over any facilities of the other Party, its affiliated companies, or its connecting and concurring carriers involved in its services, cause damage to their plant, violate any applicable law or regulation regarding the invasion of privacy of any communications carried over the Party's facilities or create hazards to the employees of either Party or to the public (each hereinafter referred to as an "Impairment of Service").

27.2 Resolution. If either Party causes an Impairment in Service, the Party whose network or service is being impaired (the "Impaired Party") shall promptly notify the Party causing the Impairment of Service (the "Impairing Party") of the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Impairing Party and the Impaired Party agree to work together to attempt to promptly resolve the Impairment of Service. If the Impairing Party is unable to promptly remedy the Impairment of Service, then the Impaired Party may at its option temporarily discontinue the use of the affected circuit, facility or equipment.

28. Publicity. Any news release, public announcement, advertising, or any form of publicity pertaining to this Agreement, provision of Services or Facilities pursuant to it, or association of the Parties with respect to provision of the services described in this Agreement shall be subject to prior written approval of both GTE and Bluegrass.

29. Regulatory Agency Control. This Agreement shall at all times be subject to changes, modifications, orders, and rulings by the Federal Communications

Commission and/or the applicable state utility regulatory commission to the extent the substance of this Agreement is or becomes subject to the jurisdiction of such agency.

30. Changes in Legal Requirements. GTE and Bluegrass further agree that the terms and conditions of this Agreement were composed in order to effectuate the legal requirements in effect at the time the Agreement was produced. Any modifications to those requirements will be deemed to automatically supersede any terms and conditions of this Agreement.
31. Effective Date. If this Agreement or changes or modifications thereto are subject to approval of a regulatory agency, the "effective date" of this Agreement for such purposes will be ten (10) Business Days after such approval or in the event this Agreement is developed in whole or in part through arbitration, sixty (60) Business Days after such approval. Such date (i.e., ten (10) or, if arbitrated, sixty (60) Business Days after the approval) shall become the "effective date" of this Agreement for all purposes.
32. Regulatory Matters. Each Party shall be responsible for obtaining and keeping in effect all their own FCC, state regulatory commission, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement.
33. Rule of Construction. No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement.
34. Section References. Except as otherwise specified, references within an Article of this Agreement to a Section refer to Sections within that same Article.
35. Service Standards.
  - 35.1 The Parties shall meet applicable quality of local service standards imposed by the Commission and will provide a level of services to each other under this Agreement in compliance with the nondiscrimination requirements of the Act.
36. Severability. If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement shall remain in full force and effect and shall not be affected unless removal of that provision results, in the opinion of either Party, in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties shall negotiate in good faith for replacement language. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate

this Agreement without penalty or liability for such termination upon written notice to the other Party.

37. Subcontractors. Provider may enter into subcontracts with third parties or affiliates for the performance of any of Provider's duties or obligations under this Agreement.
38. Subsequent Law. The terms and conditions of this Agreement shall be subject to any and all applicable laws, rules, or regulations that subsequently may be prescribed by any federal, state or local governmental authority. To the extent required by any such subsequently prescribed law, rule, or regulation, the Parties agree to modify, in writing, the affected term(s) and condition(s) of this Agreement to bring them into compliance with such law, rule, or regulation.
39. Taxes. Any state or local excise, sales, or use taxes (excluding any taxes levied on income) resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party. The collecting Party shall charge and collect from the obligated Party, and the obligated Party agrees to pay to the collecting Party, all applicable taxes, except to the extent that the obligated Party notifies the collecting Party and provides to the collecting Party appropriate documentation as GTE requires that qualifies the obligated Party for a full or partial exemption. Any such taxes shall be shown as separate items on applicable billing documents between the Parties. The obligated Party may contest the same in good faith, at its own expense, and shall be entitled to the benefit of any refund or recovery, provided that such Party shall not permit any lien to exist on any asset of the other Party by reason of the contest. The collecting Party shall cooperate in any such contest by the other Party. The other Party will indemnify the collecting Party from any sales or use taxes that may be subsequently levied on payments by the other Party by the collecting Party.
- 39.1 Tax - A charge which is statutorily imposed by the state or local jurisdiction and is either (a) imposed on the seller with the seller having the right or responsibility to pass the charge(s) on to the purchaser and the seller is responsible for remitting the charge(s) to the state or local jurisdiction or (b) imposed on the purchaser with the seller having an obligation to collect the charge(s) from the purchaser and remit the charge(s) to the state or local jurisdiction.

Taxes shall include but not be limited to: federal excise tax, state/local sales and use tax, state/local utility user tax, state/local telecommunication excise tax, state/local gross receipts tax, and local school taxes. Taxes shall not

include income, income-like, gross receipts on the revenue of a provider, or property taxes. Taxes shall not include payroll withholding taxes unless specifically required by statute or ordinance.

- 39.2 **Fees/Regulatory Surcharges** - A charge imposed by a regulatory authority, other agency, or resulting from a contractual obligation, in which the seller is responsible or required to collect the fee/surcharge from the purchaser and the seller is responsible for remitting the charge to the regulatory authority, other agency, or contracting party.

Fees/Regulatory Surcharges shall include but not be limited to E911/911, E311/311, franchise fees, Lifeline, hearing impaired, and Commission surcharges.

40. **Trademarks and Trade Names.** Except as specifically set out in this Agreement, nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, or trade names of the other for any purpose whatsoever.

41. **Waiver.** The failure of either Party to insist upon the performance of any provision of this Agreement, or to exercise any right or privilege granted to it under this Agreement, shall not be construed as a waiver of such provision or any provisions of this Agreement, and the same shall continue in full force and effect.

42. **Environmental Responsibility.**

- 42.1 GTE and Bluegrass agree to comply with applicable federal, state and local environmental and safety laws and regulations including U.S. Environmental Protection Agency (EPA) regulations issued under the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, Superfund Amendments and Reauthorization Act and the Toxic Substances Control Act and OSHA regulations issued under the Occupational Safety and Health Act of 1970. Each Party has the responsibility to notify the other if Compliance inspections occur and/or citations are issued that impact any aspect of this Agreement such as occurring on a Parties' Facility or involving potential employee exposure.

- 42.2 GTE and Bluegrass shall provide notice of known and recognized physical hazards or hazardous chemicals that must include providing Material Safety Data Sheets (MSDSs) for materials existing on site or brought on site to the Facility. Each Party is required to provide specific notice for potential imminent

danger conditions which could include, but is not limited to, a defective utility pole or significant petroleum contamination in a manhole.

- 42.3 GTE will make available additional environmental control or safety procedures for Bluegrass to review and follow when working at a GTE Facility. Providing these procedures, beyond government regulatory Compliance requirements, is the decision of GTE. These practices/procedures will represent the regular work practices required to be followed by the employees and contractors of GTE for safety and environmental protection.
- 42.4 Any materials brought, used or remaining at the Facility by Bluegrass are owned by Bluegrass. Bluegrass will indemnify GTE for these materials. No substantial new safety or environmental hazards can be created or new hazardous materials can be used at a GTE Facility. Bluegrass must demonstrate adequate emergency response capabilities for its materials used or remaining at the GTE Facility.
- 42.5 When third party contamination is discovered at a GTE Facility, the Party uncovering the condition must notify the proper safety or environmental authority, if required under applicable laws or regulations. Bluegrass must also notify GTE of third party contamination it discovers at GTE facilities. The cost causer (requiring access) will become the generator, as owner or operator, of any waste materials such as petroleum contaminated water, sewage or manhole sediment. Notwithstanding Sections 22 and 42.9 hereunder, the cost causer (requiring access) shall indemnify the other Party hereunder.
- 42.6 Bluegrass should obtain and use its own environmental permits, if necessary. If GTE's permit or EPA identification number must be used, Bluegrass must comply with all of GTE's environmental processes including environmental "best management practices (BMP)" and/or selection of disposition vendors and disposal sites.
- 42.7 Bluegrass visitors must comply with GTE security, fire safety, safety, environmental and building practices/codes including equivalent employee training when working in GTE facilities.
- 42.8 GTE and Bluegrass shall coordinate plans or information required to be submitted to government agencies, such as emergency response plans and community reporting. If fees are associated with filing, GTE and Bluegrass must develop a cost sharing procedure.

42.9 Notwithstanding Section 22, GTE and Bluegrass shall indemnify, defend and hold harmless the other party from and against any claims (including, without limitation, third party claims for personal injury or real or personal property damage), judgments, damages (including direct and indirect damage, and punitive damages), penalties, fines, forfeitures, cost, liabilities, interest and losses or in connection with the violation or alleged violation of any applicable requirement or the presence or alleged presence of contamination arising out of the indemnifying party's acts or omissions concerning its operations at the Facility.

Notwithstanding Section 21, with respect to environmental responsibility under this Section 42, GTE and Bluegrass shall indemnify, defend and hold harmless the other party from and against any claims (including, without limitation, third party claims for personal injury or real or personal property damage), judgments, damages (including direct and indirect damage, and punitive damages), penalties, fines, forfeitures, cost, liabilities, interest and losses proximately caused by the indemnifying Party's negligent or willful misconduct regardless of form, or in connection with the violation or alleged violation of any applicable requirement with respect to the presence or alleged presence of contamination arising out of the indemnifying party's acts or omissions concerning its operations at the Facility.

42.10 Activities impacting safety or the environment of a Right of Way must be harmonized with the specific agreement and the relationship between GTE and the private land owner. This could include limitations on equipment access due to environmental conditions (e.g., wetland area with equipment restrictions).

ARTICLE IV  
INTERCONNECTION AND TRANSPORT AND TERMINATION OF TRAFFIC

1. Services Covered by This Article.
  - 1.1 Types of Services. This Article governs the provision of internetwork facilities (i.e., physical interconnection services and facilities), meet point billing by GTE to Bluegrass or by Bluegrass to GTE and the transport and termination of Local Traffic between GTE and Bluegrass. The services and facilities described in this Article shall be referred to in this Article IV as the "Services."
  - 1.2 Service Locations for Interconnection Services and Facilities. Appendix A, Service Matrix, attached to this Agreement and made a part hereof, sets forth the Services and each location in the State where a Service shall be provided (the "Service Locations") and the Interconnection Point ("IP") for such Services. The Parties shall update Appendix A (including the accompanying Service Attachment - Appendix B) whenever a new Service or a new Service Location is added to this Agreement in accordance with Section 1.3.
  - 1.3 Additional Services or Service Locations. If, during the term of this Agreement, GTE desires to provide to Bluegrass and Bluegrass desires to purchase from GTE, or Bluegrass desires to provide to GTE and GTE desires to purchase from Bluegrass, additional services in the State, or existing Services in new locations in the State, GTE shall complete a new Appendix A Service Matrix and Appendix B Service Attachment(s) and provide to Bluegrass. The Appendix A shall be signed by GTE's authorized Account Manager and an authorized representative of Bluegrass, applied to this agreement, and thereby made wholly a part of and subject to this Agreement. Upon the date indicated on the Service Attachment accompanying the Service Matrix and continuing through the remaining term of this Agreement, the new Services shall be deemed part of the Services provided pursuant to this Article and/or the new locations shall be deemed part of the Service Locations.
2. Billing and Rates.
  - 2.1 Rates and Charges. Customer agrees to pay to Provider the rates and charges for the Services set forth in the applicable appendices to this Agreement. Rates and charges are set forth in Appendix C attached to this Agreement and made a part hereof.
  - 2.2 Billing. Provider shall render to Customer a bill for interconnection services on a current basis. Charges for physical facilities and other nonusage sensitive

charges shall be billed in advance, except for charges and credits associated with the initial or final bills. Usage sensitive charges, such as charges for termination of Local Traffic, shall be billed in arrears. Bluegrass is required to order trunks pursuant to Section 4.3.4 of this Article. Charges for traffic that has been routed over a jurisdictionally inappropriate trunk group (e.g., local traffic carried over trunks used for Switched Access Traffic) may be adjusted to reflect the appropriate compensation arrangement and may be handled as a post-billing adjustment to bills rendered.

3. Transport and Termination of Traffic.

3.1 Traffic to be Exchanged. The Parties shall reciprocally terminate Local, IntraLATA Toll, optional EAS and jointly provided Interexchange Carrier Traffic originating on each other's networks utilizing either Direct or Indirect Network Interconnections as provided in this Article IV. To this end, the Parties agree that there will be interoperability between their networks. The Parties agree to exchange traffic associated with Third-Party LECs, CLECs and Wireless Service Providers pursuant to the compensation arrangement specified in Section 3.3 herein. Only traffic originated by or terminating to the Parties' end user customers is to be exchanged. In addition, the Parties will notify each other of any anticipated change in traffic to be exchanged (e.g., traffic type, volume).

3.2 Compensation For Exchange Of Traffic. The Parties shall compensate each other for the exchange of Local Traffic in accordance with Appendix C attached to this Agreement and made a part hereof. Charges for the transport and termination of non-local traffic shall be in accordance with the Parties' respective intrastate or interstate access tariffs, as appropriate. The Parties will develop an initial factor representative of the share of traffic exempt from local compensation. This factor will be updated quarterly in like manner or as the Parties otherwise agree. Once the traffic that is exempt from local compensation can be measured, the actual exempt traffic will be used rather than the above factor.

3.3 Tandem Switching Services (Transiting). GTE will provide tandem switching for traffic between the Parties' end offices subtending or interconnected with the GTE access tandem, as well as for traffic between Bluegrass's end users and any Third Party which is interconnected to the GTE access tandems as follows:

3.3.1 Bluegrass will compensate GTE for each minute of originated tandem switched traffic which terminates to third party (e.g., other

CLEC, ILEC, or wireless service provider). The applicable rate for this charge is identified in Appendix C.

3.3.2 Bluegrass also assumes responsibility for compensation to the company which terminates the call.

3.4 Inter-Tandem Switching. The Parties will only use inter-tandem switching for the transport and termination of local/EAS or intraLATA toll traffic originating on each other's network at and after such time as either (i) Bluegrass has agreed to and fully implemented an existing intraLATA toll compensation mechanism such as IntraLATA Terminating Access Compensation (ITAC) or a functional equivalent thereof or (ii) generally accepted industry signaling standards and AMA record standards support the recognition of multiple tandem switching events.

4. Direct Network Interconnection.

4.1 Network Interconnection Architecture. Bluegrass may interconnect with GTE at any of the minimum technically feasible points required by the FCC. Interconnection at additional points will be reviewed on an individual case basis. Where the Parties mutually agree following a Bona Fide Request to directly interconnect their respective networks, interconnection will be as specified in the following subsections. The "IPs" shall be set forth in Appendix A attached to this Agreement and made a part hereof. Based on the configuration, the installation timeline will vary considerably, however, GTE will work with Bluegrass in all circumstances to install "IPs" within 120 calendar days absent extenuating circumstances. Internetwork connection and protocol must be based on industry standards developed consistent with Section 256 of the Telecommunications Act of 1996.

4.1.1 Subject to mutual agreement, the Parties may use the following types of network facility interconnection, using such interface media as are (i) appropriate to support the type of interconnection requested and (ii) available at the facility at which interconnection is requested. For each "IP" set forth in Appendix A, the Parties shall specify the type of interconnection used at that "IP."

(a) A Mid-Span Fiber Meet within an existing GTE exchange area whereby the Parties mutually agree to jointly plan and engineer their facility "IP" at a designated manhole or junction location. The "IP" is the demarcation between ownership of the fiber transmission facility. Each party is

individually responsible for its incurred costs in establishing this arrangement.

- (b) A Virtual or Physical EIS arrangement at a GTE wire center subject to the rates, terms, and conditions contained in GTE's applicable tariffs.
- (c) A Special Access arrangement terminating at a GTE wire center subject to the rates, terms, and conditions contained in GTE's applicable tariffs. These facilities will meet the standards set forth in such tariffs.

4.1.2 Virtual and Physical EIS arrangements are governed by appropriate GTE tariffs.

4.1.3 The Parties will mutually designate at least one POI on GTE's network within each GTE local calling area for the routing of Local Traffic. Recording and billing of traffic routed over these facilities shall be as provided in Section 3 of this Article.

4.2 Compensation. The Parties agree to the following compensation for internetwork facilities, depending on facility type.

4.2.1 Mid-Span Fiber Meet: GTE will charge special access (flat rated) transport from the applicable intrastate access tariff and will rate charges between the "IP" and GTE's interconnection switch. Charges will be reduced to reflect the proportionate share of the facility that is used for transport of traffic originated by GTE. Bluegrass will charge flat rated transport to GTE for Bluegrass facilities used by GTE. Bluegrass will charge flat rated transport to GTE at Bluegrass tariffed rates or as mutually agreed, not to exceed GTE rates. Bluegrass will apply charges based on the lesser of; (i) the airline mileage from the "IP" to the Bluegrass switch; or (ii) the airline mileage from the GTE switch to the serving area boundary.

4.2.2 Collocation: GTE will charge Virtual or Physical EIS rates from the applicable GTE tariff. Bluegrass will charge GTE flat rated transport at Bluegrass tariffed rates or as mutually agreed, not to exceed GTE rates, to reflect the proportionate share of the facility that is used for transport of traffic originated by GTE. Bluegrass will charge flat rated transport to GTE at rates no higher than rates charged by GTE to Bluegrass. Bluegrass will apply charges based on the lesser of; (i) the airline mileage from the "IP" to the Bluegrass switch; or (ii) two

(2) times the airline mileage from the GTE switch to the serving area boundary.

4.2.3 Special Access: GTE will charge special access rates from the applicable GTE intrastate access tariff. Charges will be reduced to reflect the proportionate share of the facility that is used for transport of traffic originated by GTE.

4.2.4 The Parties' proportionate share of flat rated transport facilities will be based upon the Parties' proportionate usage of the facilities, as specified in Appendix C.

### 4.3 Trunking Requirements.

4.3.1 The Parties agree to establish trunk groups of sufficient capacity from the interconnecting facilities such that trunking is available to any switching center designated by either Party, including end offices, tandems, 911 routing switches, and directory assistance/operator service switches. The Parties will mutually agree where one-way or two-way trunking will be available. The Parties may use two-way trunks for delivery of local traffic or either Party may elect to provision its own one-way trunks for delivery of local traffic to the other Party. If a Party elects to provision its own one-way trunks, that Party will be responsible for its own expenses associated with the trunks.

4.3.2 Bluegrass shall make available to GTE trunks over which GTE shall terminate to end users of Bluegrass Local Traffic and intraLATA toll or optional EAS traffic originated from end users of GTE-provided Exchange Service.

4.3.3 GTE shall make available to Bluegrass trunks over which Bluegrass shall terminate to end users of GTE Local Traffic and intraLATA toll or optional EAS traffic originated from end users of Bluegrass-provided service.

4.3.4 Bluegrass and GTE shall, where applicable, make reciprocally available, by mutual agreement, the required trunk groups to handle different traffic types. Bluegrass and GTE will support the provisioning of trunk groups that carry combined or separate Local Traffic and intraLATA toll and optional EAS traffic. GTE requires separate trunk groups from Bluegrass to provide Switched Access Service to IXCs. To the extent Bluegrass desires to have any

interexchange carriers (IC) terminate traffic to Bluegrass's IC transiting trunks, Bluegrass will arrange for such IC to issue a Letter of Authorization (LOA) to GTE instructing GTE to route such traffic over the appropriate trunk group. Until GTE receives and processes such LOAs, the traffic will not be routed.

- 4.3.4.1 Each Party agrees to route traffic only over the proper jurisdictional trunk group.
- 4.3.4.2 Each Party shall only deliver traffic over the local interconnection trunk groups to the other Party's switch or, when delivered to GTE, for those publicly-dialable NXX Codes served by end offices that directly subtend the GTE access tandem or to those other local providers that directly subtend the access tandem.
- 4.3.4.3 Neither party shall route Switched Access Service traffic over local interconnection trunks, or local traffic over Switched Access Service trunks.
- 4.3.5 Bluegrass will provide PLU factors on a quarterly basis to identify the proper jurisdiction (local or non-local) of each call type that is carried over the local interconnection trunks. If these percentages are not received quarterly, the Parties shall use the last previous reported percentages. The PLU factor is identified on Appendix C.
- 4.3.6 Reciprocal traffic exchange arrangement trunk connections shall be made at a DS-1 or multiple DS-1 level or DS-3 (SONET where technically available) and shall be jointly-engineered to an objective P.01 grade of service.
- 4.3.7 Bluegrass and GTE agree to use diligent efforts to develop and agree on a Joint Interconnection Grooming Plan prescribing standards to ensure that the reciprocal traffic exchange arrangement trunk groups are maintained at consistent P.01 or better grades of service. Such plan shall also include mutually-agreed upon default standards for the configuration of all segregated trunk groups.
- 4.3.8 Signaling System 7 (SS7) Common Channel Signaling will be used to the extent that such technology is available.
- 4.4 Network Redesigns Initiated by GTE. GTE will not charge Bluegrass when GTE initiates its own network redesigns/reconfigurations.

4.5 Interconnection Calling and Called Scopes for the Access Tandem Interconnection and the End Office Interconnection.

4.5.1 GTE Access Tandem Interconnection calling scope (originating and terminating) is to those GTE end offices which subtend the GTE access tandem to which the connection is made except as provided for in Section 3.3 herein.

4.5.2 GTE End Office Interconnection calling scope (originating and terminating) is only to the end office to which the connection is made.

5. Indirect Network Interconnection. Either Party may deliver traffic destined to terminate at the other Party's end office via another local provider's tandem provided that the Parties have established compensation agreement(s) specific to this arrangement. Neither Party shall deliver traffic destined to terminate at the other Party's end office via another local provider's end office. In addition, except as provided in section 3.4 of this Article, neither Party shall deliver traffic destined to terminate at an end office subtending the other Party's access tandem via another local provider's access tandem.

6. Number Resources.

6.1 NXX Number Assignment. Nothing in this Agreement shall be construed to, in any manner, limit or otherwise adversely impact Bluegrass's right to employ or to request and be assigned any NANP number resources including, but not limited to, Central Office (NXX) Codes pursuant to the Central Office Code Assignment Guidelines. Any request for numbering resources by Bluegrass shall be made directly to the NANP Number Plan Administrator. Except with respect to those areas in which GTE is the NANP Number Plan Administrator, GTE shall not be responsible for the requesting or assignment of number resources to Bluegrass. The Parties agree that disputes arising from numbering assignment shall be arbitrated by the NANP Number Plan Administrator. Bluegrass shall not request number resources to be assigned to any GTE switching entity.

6.1.1 Each Party shall be responsible for notifying its customers of any changes in numbering or dialing arrangements to include changes such as the introduction of new NPAs or new NXX codes. Each Party is responsible for administering NXX codes assigned to it.

6.2 Blocks of 100 Numbers Assignment. This arrangement is provided only to CMRS carriers. Bluegrass may elect to associate a GTE end office

interconnection with telephone number groups from the same GTE end office at which the interconnection is established. Blocks of 100 numbers will be provided by GTE to Bluegrass as available from the NXX codes of that GTE end office. GTE will charge and Bluegrass agrees to pay to GTE the charge per block of 100 numbers as indicated on Appendix C and the applicable Service Attachment. This interconnection arrangement may be established as a one-way trunk only used to carry traffic terminating to end user customers of Bluegrass. Where technically feasible, this interconnection arrangement may also be established on a two-way basis for use by Bluegrass to access any ancillary services that may be provided by GTE. Any use of this interconnection arrangement other than that specified in this section is outside the scope of this Agreement and such usage is subject to charges associated with the services used by Bluegrass. SS7 signaling is not available with this GTE end office interconnection arrangement. Bluegrass is solely responsible for the cost of the interconnection facilities. The sole compensation for traffic terminating to Bluegrass over this interconnection arrangement will be paid by GTE at the rate indicated on Appendix C.

- 6.3 Rate Centers. For purposes of enabling GTE to appropriately apply its toll tariff to its end user customers, the Parties will utilize Rate Centers published in the LERG for all NPA-NXX codes.
- 6.4 Routing Points. Bluegrass will also designate a Routing Point for each assigned NXX code. Bluegrass may designate one location within each Rate Center as a Routing Point for the NPA-NXX associated with that Rate Center; alternatively Bluegrass may designate a single location within one Rate Center to serve as the Routing Point for all the NPA-NXXs associated with that Rate Center and with one or more other Rate Centers served by Bluegrass within an existing GTE exchange area and LATA.
- 6.5 Code and Numbers Administration. The Parties will comply with code administration requirements as prescribed by the FCC, the Commission, and accepted industry guidelines. Where GTE is the NANP Number Plan Administrator, GTE will administer number resources, and charge for such administration in accord with applicable rules and regulations. GTE will administer numbering resources in a competitively neutral manner, and process requests for NXX codes in a timely manner and in accord with industry standards. The Parties shall protect Bluegrass proprietary information that may be submitted to GTE in connection with GTE's responsibilities as NANP Number Plan Administrator in accordance with Article III, Section 9 of this Agreement.

6.6 Programming Switches. It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to the Local Exchange Routing Guide ("LERG") guidelines to recognize and route traffic to the other Party's assigned NXX codes at all times. Neither Party shall impose any fees or charges whatsoever on the other Party for such activities.

7. Meet-Point Billing.

7.1 Meet-Point Arrangements.

- 7.1.1 The Parties may mutually establish Meet-Point Billing ("MPB") arrangements in order to provide Switched Access Services to Access Service customers via a GTE access tandem in accordance with the MPB guidelines adopted by and contained in the Ordering and Billing Forum's MECAB and MECOD documents.
- 7.1.2 Except in instances of capacity limitations, GTE shall permit and enable Bluegrass to sub-tend the GTE access tandem(s) nearest to the Bluegrass Rating Point(s) associated with the NPA-NXX(s) to/from which the Switched Access Services are homed. In instances of capacity limitation at a given access tandem, Bluegrass shall be allowed to subtend the next-nearest GTE access tandem in which sufficient capacity is available.
- 7.1.3 Interconnection for the MPB arrangement shall occur at the "IP".
- 7.1.4 Common Channel Signaling shall be utilized in conjunction with MPB arrangements to the extent such signaling is resident in the GTE access tandem switch.
- 7.1.5 Bluegrass and GTE will use diligent efforts, individually and collectively, to maintain provisions in their respective federal and state access tariffs, and/or provisions within the National Exchange Carrier Association ("NECA") Tariff No. 4, or any successor tariff, sufficient to reflect this MPB arrangement, including MPB percentages.
- 7.1.6 As detailed in the MECAB document, Bluegrass and GTE will, in a timely fashion, exchange all information necessary to accurately, reliably and promptly bill Access Service customers for Switched Access Services traffic jointly handled by Bluegrass and GTE via the meet-point arrangement. Information shall be exchanged in

Electronic Message Record ("EMR") format, on magnetic tape or via a mutually acceptable electronic file transfer protocol.

- 7.1.7 Bluegrass and GTE shall work cooperatively to coordinate rendering of Meet-Point bills to customers, and shall reciprocally provide each other usage data and related information at the appropriate charge.

7.2 Compensation.

- 7.2.1 Initially, billing to Access Service customers for the Switched Access Services jointly provided by Bluegrass and GTE via the MPB arrangement shall be according to the multiple-bill method as described in the MECAB guidelines. This means each Party will bill the portion of service they provided at their appropriate tariff, or price list.

- 7.2.2 Subsequently, Bluegrass and GTE may mutually agree to implement one of the following options for billing to third parties for the Switched Access Services jointly provided by Bluegrass and GTE via the MPB arrangement: single-bill/single tariff method, single-bill/multiple tariff method, or to continue the multiple-bill method. Should Bluegrass prefer to change among these billing methods, Bluegrass shall notify GTE of such a request in writing, ninety (90) Business Days in advance of the date on which such change is desired to be implemented, such changes then may be made in accordance with MECAB guidelines and if GTE mutually agrees, the change will be made.

8. Common Channel Signaling.

- 8.1 Service Description. The Parties will provide Common Channel Signaling ("CCS") to one another via Signaling System 7 ("SS7") network interconnection, where and as available, in the manner specified in FCC Order 95-187, in conjunction with all traffic exchange trunk groups. SS7 signaling and transport services shall be provided by GTE in accordance with the terms and conditions of this Section 8 of this Article under a separate agreement. The Parties will cooperate on the exchange of all appropriate SS7 messages for local and intraLATA call set-up signaling, including ISUP and Transaction Capabilities Application Part ("TCAP") messages to facilitate full interoperability of all CLASS Features and functions between their respective networks. Any other SS7 message services to be provided using TCAP messages (such as data base queries) will be jointly negotiated and agreed upon.

- 8.2 Signaling Parameters. All SS7 signaling parameters will be provided in conjunction with traffic exchange trunk groups, where and as available. These parameters include Automatic Number Identification ("ANI"), Calling Party Number ("CPN"), Privacy Indicator, calling party category information, originating line information, charge number, etc. Also included are all parameters relating to network signaling information, such as Carrier Information Parameter ("CIP"), wherever such information is needed for call routing or billing. GTE will provide SS7 via GR-394-SS7 and/or GR-317-SS7 format(s).
- 8.3 Privacy Indicators. Each Party will honor all privacy indicators as required under applicable law.
- 8.4 Connection Through STP. Bluegrass must arrange for interconnection with the GTE STP(s) serving the LATA in which the traffic exchange trunk groups are interconnected. Additionally, all interconnection to GTE's 800/888 database and GTE's LIDB shall, consistent with this section, take place only through appropriate STP pairs.
- 8.5 Third Party Signaling Providers. Bluegrass may choose a third-party SS7 signaling provider to transport messages to and from the GTE SS7 network. In that event, that third-party provider must present a letter of agency to GTE, prior to the testing of the interconnection, authorizing the third party to act on behalf of Bluegrass in transporting SS7 messages to and from GTE. The third-party provider must interconnect with the GTE STP(s) serving the LATA in which the traffic exchange trunk groups are interconnected.
- 8.6 Multi-Frequency Signaling. In the case where CCS is not available, in band Multi-Frequency ("MF"), wink start, E & M channel associated signaling with ANI will be provided by the Parties. Network signaling information, such as CIC/OZZ, will be provided wherever such information is needed for call routing or billing.
9. Service Quality and Performance. Each Party shall provide Services under this Article to the other Party that are equal in quality to that the Party provides to itself, its Affiliates or any other entity. "Equal in quality" shall mean that the Service will meet the same technical criteria and performance standards that the providing Party uses within its own network for the same Service at the same location under the same terms and conditions.
10. Network Outages. GTE shall work with Bluegrass to establish reciprocal responsibilities for managing network outages and reporting. Each party shall be responsible for network outage as a result of termination of its equipment in

GTE wire center or access tandem. Bluegrass shall be responsible for notifying GTE of significant outages which could impact or degrade GTE switches and services.

11. Transition and Implementation. The Parties acknowledge that there may be certain instances in which existing arrangements between the Parties are not in accordance with the requirements of this agreement. Existing interconnection arrangements that are not in compliance with the requirements of this agreement shall not fall under the scope of this agreement until they are brought into compliance with the requirements of this agreement. Until such arrangements are brought into compliance with the requirements of this agreement, compensation will be in compliance with effective FCC rules, specifically §51.717 if applicable. The Parties agree to use their best efforts to bring all arrangements into compliance with the terms and conditions of this agreement within six (6) months of the effective date of this agreement or within whatever other period may be mutually agreeable to the Parties.

ARTICLE V  
ADDITIONAL SERVICES AND COORDINATED SERVICE ARRANGEMENTS

1. Misdirected Calls. The Parties will employ the following procedures for handling any misdirected calls (e.g., Business office, repair bureau, etc.).
  - 1.1 To the extent the correct provider can be determined, each Party will refer misdirected calls to the proper provider of local exchange service. When referring such calls, both Parties agree to do so in a courteous manner, at no charge.
  - 1.2 For misdirected repair calls, the Parties will provide their respective repair bureau contact number to each other on a reciprocal basis and provide the end user the correct contact number.
  - 1.3 In responding to misdirected calls, neither Party shall make disparaging remarks about each other, nor shall they use these calls as a basis for internal referrals or to solicit end users or to market services.
2. 911 Arrangements. To provide basic 911 services by connection to GTE's 911 selective router (i.e. 911 tandem), the following terms and conditions will apply.
  - 2.1 Description of Service. GTE will provision basic 911 service over an auxiliary connection. A minimum of two 911 trunks, or that quantity necessary to provide P.01 Transmission Grade of Service is required. Basic 911 does not include detailed location information. Bluegrass will compensate GTE for the full cost of provisioning the auxiliary connection and a selective router port charge. Charges for the selective port will be at the rates set forth in GTE General Exchange Tariff addressing 911 service. Mobile to Land usage charges are not applicable on the 911 trunks.
  - 2.2 Transport. Bluegrass may obtain transport from GTE for the transport of the auxiliary connection at the rates set forth in GTE's intrastate switched access tariff or in GTE's intrastate special access tariff.
  - 2.3 Cooperation and Level of Performance. The Parties will work together to facilitate the prompt, reliable and efficient interconnection of the Bluegrass's systems to the 911 platform, without degradation to Bluegrass's existing 911 level of performance and grade of service.
  - 2.4 Enhanced 911 (E911). When technically feasible, the Parties agree that they shall make provisions to ensure access by all of Bluegrass's customers to

E911, as required by FCC Docket 94-102. The Parties are responsible for their own network requirements to establish E911 connectivity. A separate agreement is necessary between the Parties for E911 services to be provided by GTE.

3. Information Services Traffic.

- 3.1 Routing. Each Party shall route traffic for Information Services (i.e. 900-976, internet, weather lines, sports lines, etc.) which originates on its network to the appropriate information Service Platform.
- 3.2 Recording. The Party on whose network the information services traffic originated (the "Originating Party") shall provide the recorded call detail information to the Party to whose information platform the information services traffic terminated (the "Terminating Party").
- 3.3 Rating. The Terminating Party shall provide to the Originating Party all rating information necessary to bill the information services traffic to the Originating Party's end users pursuant to the Terminating Party's agreement(s) with each information provider.
- 3.4 Billing and Collection. The Originating party shall bill and collect such information service charges and shall remit the amounts collected to the Terminating Party less:
- (a) a mutually agreed upon fee for providing billing and collection of the information service charges; and
  - (b) any uncollectibles reserve, which shall be calculated based on the uncollectibles reserve in the Terminating Party's billing and collection agreement with the applicable information services provider; and
  - (c) any customer adjustment provided by the Originating Party.
- 3.5 Blocking. Nothing in this Agreement shall restrict either Party from offering to its end user customers the ability to block the completion of information service traffic.

ARTICLE VI  
COLLOCATION

1. Physical Collocation. GTE shall provide to Bluegrass physical collocation of equipment pursuant to 47 CFR § 51.323 necessary for interconnection, provided that GTE may provide virtual collocation in place of physical collocation, or in some cases deny a particular collocation request entirely, if GTE demonstrates that physical collocation, or perhaps even virtual collocation, is not practical because of technical reasons or space limitations, as provided in Section 251(c)(6) of the Act.

IN WITNESS WHEREOF, each Party has executed this Agreement to be effective as of the date specified in Section 31 of Article III.

GTE South Incorporated

Bluegrass Cellular Inc. for and on behalf  
of Kentucky RSA No. 3 Cellular General  
Partnership, Kentucky RSA No. 4  
Cellular General Partnership and  
Cumberland Cellular Partnership

By Connie Nicholas

By Ronald R. Smith

Name Connie Nicholas  
Assistant Vice President

Name RONALD R. SMITH

Title Wholesale Markets-Interconnection

Title PRESIDENT

Date 2/23/98

Date 2-5-98

APPROVED AS TO FORM BY  
LEGAL DEPARTMENT

[Signature]

APPENDIX A  
SERVICE MATRIX

Date \_\_\_\_\_

Service Location (identified by tandem serving area)	IP (identified by CLLI code)	Services (identified by _____)
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**APPENDIX B  
SERVICE ATTACHMENTS**

Service Attachment ID: \_\_\_\_\_

**SERVICE ATTACHMENT  
ACCESS TANDEM INTERCONNECTION**

Location: city, state (CLLI code)

Legal Entities:

Effective Date: (Enter Effective Date)

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**Section 1 - Interconnection Facilities**

1.1 The interconnection facilities for this Access Tandem Interconnection are \_\_\_\_\_.  
(Enter appropriate facility type DS1 or DS3)

1.1.1 Charges for the interconnection facilities are based on the (GTE \_\_\_\_\_ Tariff or ICB) and are subject to change during the term of this Agreement.

1.1.1.1 If ICB, the following rate elements and charges apply:

1.1.1.1.1 Non-recurring charges:

(list applicable NRC rate elements and rates)

1.1.1.1.2 Monthly Recurring charges:

(list applicable MRC rate elements and rates)

**Section 2 - CCS7 Access Service Connection (To be completed if this is an SS7 interconnection.)**

2.1 The CCS7 Access Service Connection (Type S) required for this service is provided by \_\_\_\_\_.  
(Enter appropriate provider, GTE or Other.)

2.1.1 If the CCS7 Access Service Connection (Type S) is provided by GTE, the facility charges are based on the \_\_\_\_\_ (Enter appropriate, GTOC or GSTC) FCC NO. 1 Tariff and are subject to change during the term of this Agreement.

Service Attachment ID: \_\_\_\_\_

SERVICE ATTACHMENT  
END OFFICE INTERCONNECTION

Location: city, state (CLLI code)

Legal Entities:

Effective Date: (Enter Effective Date)

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**Section 1 - Interconnection Facilities**

1.1 The interconnection facilities for this End Office Interconnection are \_\_\_\_\_. (Enter appropriate facility type DS1 or DS3)

1.1.1 Charges for the interconnection facilities are based on the (GTE \_\_\_\_\_ Tariff or ICB) and are subject to change during the term of this Agreement.

1.1.1.1 If ICB, the following rate elements and charges apply:

1.1.1.1.1 Non-recurring charges:

(list applicable NRC rate elements and rates)

1.1.1.1.2 Monthly Recurring charges:

(list applicable MRC rate elements and rates)

**Section 2 - CCS7 Access Service Connection (To be completed if this is an SS7 interconnection.)**

2.1 The CCS7 Access Service Connection (Type S) required for this service is provided by \_\_\_\_\_. (Enter appropriate provider, GTE or Other.)

2.1.1 If the CCS7 Access Service Connection (Type S) is provided by GTE, the facility charges are based on the \_\_\_\_\_ (Enter appropriate, GTOC or GSTC) FCC NO. 1 Tariff and are subject to change during the term of this Agreement.

APPENDIX C  
RATES AND CHARGES FOR  
TRANSPORT AND TERMINATION OF TRAFFIC

General. The rates contained in this Appendix C are the rates as defined in Article IV and are subject to change resulting from future Commission or other proceedings, including but not limited to any generic proceeding to determine GTE's unrecovered costs (e.g., historic costs, contribution, undepreciated reserve deficiency, or similar unrecovered GTE costs (including GTE's interim Universal Service Support Surcharge)), the establishment of a competitively neutral universal service system, or any appeal or other litigation.

**LOCAL TRANSPORT AND TERMINATION RATES**

A. Transport and Termination Rate

Rate applied per terminated MOU:           \$0.0063

This rate is reciprocal and symmetrical for Local Traffic exchanged between GTE and Bluegrass and applies for all Local Traffic MOUs exchanged at any POI, regardless of whether the POI is at an access tandem or end office. Rate based on current available cost studies.

B. Tandem Switching Rate (Transiting)

Rate applied per MOU:                       \$0.0014

This rate applies to all local MOUs exchanged between Bluegrass and another carrier through facilities of GTE. Rate based on current available cost studies.

**BILLING FACTORS**

A. Terminating Traffic Factors:       20%   GTE to Bluegrass  
  80%   Bluegrass to GTE  
  100%  Total 2-way Usage

The Terminating Traffic Factors describe the level of local usage originating from one Party and terminating to the other Party as a percentage of total 2-way local traffic exchanged between the Parties. For example, a factor of 90% for GTE would mean that, of total 2-way local MOUs exchanged between GTE and Bluegrass, 90% originated from a Bluegrass wireless end user customer and terminated to a GTE end user customer. These factors

are used to apportion flat rated transport facilities between the Parties and may be used where needed as a billing surrogate. These factors are subject to change based upon mutually acceptable traffic data on no less than a quarterly basis. If factors are not updated quarterly, the Parties shall use the last previously established factors.

B. Transiting Factor: 10% GTE Transited

The Transiting Factor is used to determine the amount of traffic to or from Bluegrass that transits the GTE network. The Transiting Factor is used when needed to quantify transiting traffic for billing purposes, i.e., when recorded billing data is not sufficiently available. When applied to Bluegrass originated traffic, the Transiting Factor determines the transiting traffic that was generated by Bluegrass (over and above the level of traffic that terminated to GTE). When applied to Bluegrass terminated traffic, the Transiting Factor determines the portion of traffic terminating to Bluegrass that was not originated by GTE (which was included in the level of traffic that terminated to Bluegrass). This factor is subject to change based upon mutually acceptable traffic data no more frequently than every three months. If the factor is not updated quarterly, the Parties shall use the last previously established factor.

C. PLU: 100%

The Percent Local Usage (PLU) Factor describes the portion of Local Traffic exchanged between the Parties that both originated and terminated within the same local calling area (MTA) and within the same LATA. This Local Traffic Factor applies to both originating and terminating MOUs.

### BLOCKS OF 100 NUMBERS

Installation Charge per 100 Numbers	\$48.75
Usage Compensation to Bluegrass, per Month, per Trunk	\$ 5.00

Blocks of 100 numbers are made available only to CMRS providers under the terms and conditions of this Agreement. The Installation Charge applies to new blocks of numbers provided pursuant to this Agreement. Only full blocks of 100 numbers will be provided. Number blocks are used in association with end office interconnection facilities obtained by Bluegrass. Bluegrass is solely responsible for the costs of interconnection facilities used in conjunction with blocks of 100

numbers. The Usage Compensation rate is the sole compensation to Bluegrass for local traffic terminating to Bluegrass over this interconnection arrangement. It applies per month, per DS0 trunk or equivalent.

**B**<sup>®</sup>  
**BLUEGRASS  
CELLULAR**

December 16, 1998

Via Facsimile (813) 279-9825

Ms. Marcell M. Morrell  
GTE South Incorporated  
AVP & Associates Counsel  
Mail Code FLTC0717  
201 N. Franklin  
Tampa, Florida 33602

RE: Bluegrass Cellular Inc. ("Bluegrass Cellular") / GTE South, Inc. ("GTE")  
Interconnection Agreement \$28,422.79 "True-Up" Dispute

Dear Ms. Morrell:

The purpose of this letter is to formally request that we begin the negotiation process provided for in Article III, Section 12 of the Interconnection Agreement between GTE and Bluegrass Cellular in order to resolve the above-captioned dispute. Bluegrass Cellular remains convinced that GTE owes Bluegrass Cellular a "true-up" from the date the Interconnection Agreement was approved by the Public Service Commission of the Commonwealth of Kentucky on March 26, 1998.

Section 12.2 provides for negotiations to be conducted by "non-lawyer, business representatives." Denny Lish, Manager - Network Planning, will represent Bluegrass Cellular. Please have your designated business representative contact Mr. Lish at (502) 769-0339 as soon as possible so that we may begin the negotiation process.

As you are aware, if the negotiations do not resolve this dispute within sixty (60) business days of this request, this dispute may be submitted to binding arbitration. I look forward to your prompt reply.

Thank you.

Very truly yours,



Ron Smith  
President





Although Western Wireless agrees in its complaint that "[n]o prior formal negotiations, mediation or arbitration have been undertaken," at the pre-hearing conference, Western Wireless argued that two provisions in the Interconnection Agreement "disarm" the dispute resolution provision. The first provision, found in article III, subsection 26.1--Contractual Liability, disclaims any contractual liability on the part of GTE-SW for violations of the obligations imposed, other than such liability as may be imposed by the Commission. The second provision, a notation that Western Wireless alleges was placed on the signature page by GTE-SW after the Agreement was signed but prior to adoption by the Commission, states that GTE-SW does not consent to the Agreement. Instead, the notation purports that GTE-SW's representative signed the document only under duress of a Commission order. At the pre-hearing conference, in response to Western Wireless' comment that the Commission should give no effect to the dispute resolution provisions because of these disclaimers, GTE-SW responded that those disclaimers were added to protect GTE-SW's right to appeal, and should have no effect on the Interconnection Agreement's mandatory dispute resolution provisions.

The Arbitrators do not find persuasive Western Wireless' argument that, because of GTE-SW's disclaimers, no effect should be given to the mandatory negotiation and arbitration provisions of the Interconnection Agreement. As agreed to by both parties and as plainly stated in the Interconnection Agreement, mandatory negotiation, to be followed by binding commercial arbitration if necessary, is the sole remedy to resolve disputes under the GTE-SW--Western Wireless Agreement.

Also during the pre-hearing conference, Western Wireless offered an Eighth Circuit case, *Iowa Utilities Bd. v. F.C.C.*<sup>1</sup> The case involved a petition for judicial review by several incumbent local telephone exchange carriers and state utility commissions to determine whether the Federal Communications Commission (FCC) had exceeded its authority in issuing rules governing interconnection, unbundled access, and resale. The Eighth Circuit held that the FCC had indeed exceeded its authority and stated, "We . . . believe that state commissions retain the primary authority to enforce substantive terms of the agreements made pursuant to sections 251 and 252."<sup>2</sup> Western Wireless highlighted this sentence to support its position that the Commission should still retain jurisdiction over its contractual dispute with GTE-SW, despite the Agreement's mandatory dispute resolution provisions.

The Eighth Circuit case is also distinguishable. That case involves judicial review of rules governing the boundaries of authority between the FCC and the states, while the instant docket involves a

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<sup>1</sup> 120 F.3d 753 (8th Cir. 1997).

<sup>2</sup> *Id.* at 804.

contractual dispute between two private carriers. The Commission should not exercise jurisdiction in this instance to resolve a dispute where the parties' intent upon contracting is so evident by a plain reading of the contract. The negotiated and signed Interconnection Agreement provides the sole remedy for resolution of disputes arising under it, which is a sixty-day negotiation period, followed by commercial arbitration. Western Wireless' complaint against GTE-SW is hereby dismissed.

In dismissing this complaint, however, the Arbitrators note that the Interconnection Agreement clearly suggests another method by which Western Wireless could avail itself of relief, found in article III, section 2--Term and Termination. This section, specifically subsection 2.1, states that "the term of this Agreement shall be one (1) year from the effective date of this Agreement, and said Agreement shall continue in effect until terminated by either Party upon 90 days notice."

Thus, it appears that either party may terminate the Interconnection Agreement after one year has passed from the effective date simply by providing ninety days notice. In this docket, the Agreement was signed by Western Wireless on March 4, 1997, and by GTE-SW on March 19, 1997. The revised signed Agreement was filed with the Commission on March 24, 1997. According to Commission records, there have been no amendments filed to date. Because one year has passed since the Agreement became effective, either party should be able to terminate by providing the other party with ninety days notice.

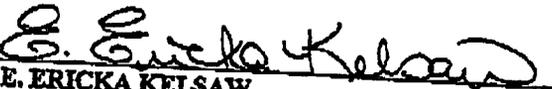
The Arbitrators note that if Western Wireless chooses to do so, it could terminate its current Agreement with GTE-SW and enter into negotiations, under section 252, for a new interconnection agreement, which includes terms and conditions that are now generally available to wireless carriers. Western Wireless could notify GTE-SW of its intent to begin negotiations on a new interconnection agreement, and approximately seven months into the process, give notice of cancellation on its current Agreement. This would address the issue of the continued availability of interconnection terms and conditions during the negotiation period. Another alternative, upon canceling the Agreement, could be to adopt the terms of another GTE-SW wireless interconnection agreement.

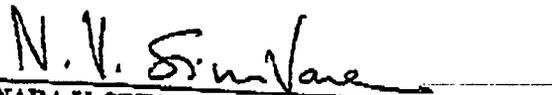
In summary, Western Wireless' complaint against GTE-SW is dismissed. Article III, section 12 of the Interconnection Agreement provides that a sixty-day period of negotiation, followed by commercial arbitration, is the sole remedy for resolution of disputes arising under the Agreement. However, per the Term and Termination clause of article III, section 2, Western Wireless could find the relief it seeks by terminating the Agreement upon ninety days notice. To ensure a contract at all times to govern the parties' interconnection, termination could be preceded by a period of negotiation with GTE-SW to obtain terms and conditions that are generally available to wireless carriers or termination could

subsequently be followed by Western Wireless' adoption of the terms and conditions of another GTE-SW interconnection agreement.

SIGNED AT AUSTIN, TEXAS the 21<sup>st</sup> day of August, 1998.

FTA § 252 ARBITRATION PANEL

  
E. ERICKA KELSAW  
ARBITRATOR

  
NARA V. SRINIVASA  
ARBITRATOR

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
WESTERN WIRELESS CORPORATION )  
For Arbitration with GTE Hawaiian )  
Telephone Company Incorporated )  
Pursuant to Section 252(b) of the )  
Telecommunications Act of 1996. )

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DOCKET NO. 96-0352

ORDER NO. 16171

Filed January 23, 1998  
At 3:20 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
WESTERN WIRELESS CORPORATION )  
For Arbitration with GTE Hawaiian )  
Telephone Company Incorporated )  
Pursuant to Section 252(b) of the )  
Telecommunications Act of 1996. )

Docket No. 96-0352

Order No. 16171

ORDER

I.

On November 25, 1997, WESTERN WIRELESS CORPORATION (WWC) filed a motion (1) to compel GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED (GTE Hawaiian Tel) to implement the interim rates that were approved by the commission and incorporated into the parties' interconnection agreement, (2) for sanctions against GTE Hawaiian Tel for failure to comply with Decision and Order No. 15372 and commission rules, and (3) for the suspension of GTE Hawaiian Tel's Standard Billing Alternative (SBA) agreement rates and reinstatement of reverse billing rates.

GTE Hawaiian Tel filed a memorandum opposing WWC's motion on December 8, 1997. WWC filed a reply to GTE Hawaiian Tel's memorandum on December 24, 1997, and GTE Hawaiian Tel filed a reply to WWC's reply on December 30, 1997.

## II.

WWC contends that GTE Hawaiian Tel has, among other things: (1) blatantly disregarded Decision and Order No. 15372 and the commission's telecommunications rules by refusing to implement the interconnection rates adopted by the commission; (2) failed to disclose in a timely manner, all information necessary to achieve effective interconnection, network termination, and mutual and reciprocal compensation; (3) and acted in bad faith throughout the proceedings by failing to inform WWC that the parties' existing interconnection arrangements were not in compliance with the interconnection agreement and would have to be brought into compliance with the agreement's requirements. WWC seeks (1) the immediate implementation of the arbitrated rates dating back to February 26, 1997, the effective date of the agreement; (2) the suspension and investigation of the rates charged by GTE Hawaiian Tel under its SBA agreement; and (3) monetary sanctions against GTE Hawaiian Tel.

In response to WWC's motion, GTE Hawaiian Tel maintains that (1) GTE Hawaiian Tel is in full compliance with Decision and Order No. 15372 and has fully complied with the arbitrated interconnection agreement, and (2) WWC's dispute with the arbitrated agreement or its implementation should be brought before an arbitrator pursuant to the terms of the agreement. GTE Hawaiian Tel requests that an evidentiary hearing be held, if the commission is inclined to consider whether GTE Hawaiian Tel has violated an order or should be sanctioned.

III.

Article IV, section 9 of the parties' interconnection agreement states in part:

The Parties acknowledge that there may be certain instances in which existing arrangements between the Parties are not in accordance with the requirements of this agreement. Existing interconnection arrangements that are not in compliance with the requirements of this agreement shall not fall under the scope of this agreement until they are brought into compliance with the requirements of this agreement. Until such arrangements are brought into compliance with the requirements of this agreement, compensation will be in compliance with effective FCC rules, specifically §51.717.

WWC contends that it was unaware, until advised by GTE Hawaiian Tel eight months after the approval of the interconnection agreement, that its existing interconnection arrangements with GTE Hawaiian Tel were not in compliance with the interconnection agreement and were subject to the provisions of Article IV, section 9.

Based on the undisputed affidavits filed by GTE Hawaiian Tel's personnel,<sup>1</sup> we are not convinced that WWC was unaware of GTE Hawaiian Tel's application of the transitional provisions under Article IV, section 9. WWC was advised as early as June 1996, through meetings with GTE Hawaiian Tel, that its existing interconnection arrangements would have to be modified or discontinued if WWC chose to pursue a new interconnection agreement. WWC was advised by letter dated February 26, 1997, the

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<sup>1</sup>In its reply, WWC does not dispute the veracity of the affidavits filed by Monte Marti, Ken Miyasato, and Deborah Quintana, but argues that they are irrelevant. We disagree; they are relevant in determining the parties' contractual intent.

effective date of the interconnection agreement, that GTE Hawaiian Tel would compensate WWC for transportation and termination pursuant to 47 C.F.R. § 51.717 until its existing interconnection arrangements were brought into compliance with the requirements of the interconnection agreement. In addition, after the effective date of the interconnection agreement, WWC and GTE Hawaiian Tel held ongoing meetings to discuss the implementation of the approved interconnection agreement, including the implementation of the arbitrated rates once traffic between WWC and GTE Hawaiian Tel was routed over the new interconnections defined in the interconnection agreement. Finally, WWC's filing of the current petition on November 25, 1997, approximately nine months after the effective date of the parties' interconnection agreement, supports GTE Hawaiian Tel's position that the parties have been jointly working to transition the interconnection arrangements to comply with the interconnection agreement, and that the parties understood that the arbitrated rates would be implemented upon completion of the interconnection modifications pursuant to Article IV, section 9.

The commission does have continuing jurisdiction over the parties' interconnection agreement. However, the commission declines to exercise jurisdiction in this instance because the dispute is essentially contractual and not a matter of regulatory compliance. WWC should first seek relief through the alternative dispute resolution process agreed to by the parties and set forth in the terms of the interconnection agreement.

With respect to the other claims raised by WWC, we see no basis to levy sanctions against GTE Hawaiian Tel. There is also no

reason to suspend and investigate GTE Hawaiian Tel's SBA agreement since it is simply a billing arrangement and not a substitute for the approved arbitrated rates.

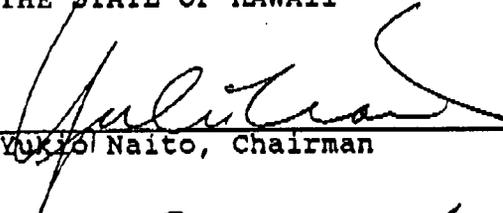
IV.

THE COMMISSION ORDERS that WWC's motion, filed on November 25, 1997, to compel GTE Hawaiian Tel to implement arbitrated interconnection rates, for monetary sanctions against GTE Hawaiian Tel, and for the suspension and investigation of GTE Hawaiian Tel's SBA agreement and the reinstatement of reverse billing, is denied.

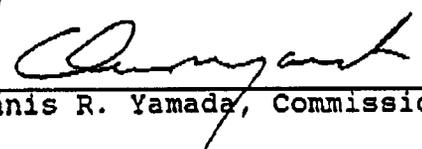
DONE at Honolulu, Hawaii this 23rd day of January, 1998.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By

  
Yukio Naito, Chairman

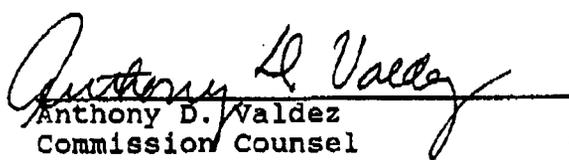
By

  
Dennis R. Yamada, Commissioner

By

(RECUSED)  
Rae M. Loui, Commissioner

APPROVED AS TO FORM:

  
Anthony D. Valdez  
Commission Counsel

98-0352.vn

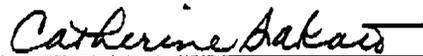
CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 16171 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

JOEL MATSUNAGA, VICE PRESIDENT-EXTERNAL AFFAIRS  
GTE HAWAIIAN TELEPHONE COMPANY, INCORPORATED  
P. O. Box 2200  
Honolulu, HI 96841

HOSHIDA BENTO & MATSUNAGA  
ATTORNEYS AT LAW  
Pauahi Tower 705  
1001 Bishop Street  
Honolulu, HI 96813

  
\_\_\_\_\_  
Catherine Sakato

DATED: January 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
WESTERN WIRELESS CORPORATION )  
For Arbitration with GTE Hawaiian )  
Telephone Company Incorporated )  
Pursuant to Section 252(b) of the )  
Telecommunications Act of 1996. )

DOCKET NO. 96-0352

ORDER NO. 16244

Filed March 13, 1998  
At 9:15 o'clock A.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
WESTERN WIRELESS CORPORATION )  
For Arbitration with GTE Hawaiian )  
Telephone Company Incorporated )  
Pursuant to Section 252(b) of the )  
Telecommunications Act of 1996. )

Docket No. 96-0352

Order No. 16244

ORDER

I.

By Order No. 16171, filed on January 23, 1998, we denied Western Wireless Corporation's (WWC) motion, filed on November 25, 1997, which requested various remedies and relief from GTE Hawaiian Telephone Company Incorporated (GTE Hawaiian Tel).<sup>1</sup> WWC filed a motion for reconsideration of Order No. 16171 on February 4, 1998. GTE Hawaiian Tel filed a reply opposing WWC's motion for reconsideration on February 13, 1998.

II.

We will deny WWC's motion for reconsideration. WWC does not raise any new grounds for relief, but rather seeks to introduce evidence in its present motion that should have been submitted on the earlier motion for relief. WWC's evidence and arguments are

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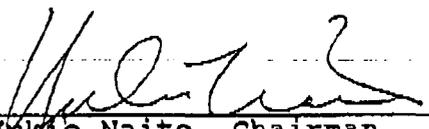
<sup>1</sup>WWC moved (1) to compel GTE Hawaiian Tel to implement arbitrated interconnection rates, (2) for monetary sanctions against GTE Hawaiian Tel, and (3) for the suspension and investigation of GTE Hawaiian Tel's Standard Billing Alternative agreement and the reinstatement of reverse billing.

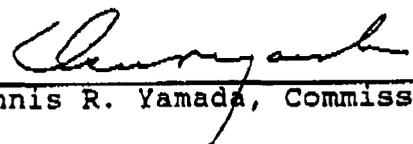
unpersuasive. In denying WWC's earlier motion, we affirmed the negotiation process favored by the federal Telecommunications Act of 1996, and gave force to the terms and conditions set forth in the parties' approved interconnection agreement. The essential dispute arises from the construction and interpretation of Article IV, section 9 of the parties' interconnection agreement. As negotiated and agreed to by the parties, the resolution of such contractual matters is governed by Article III, section 12 of the parties' interconnection agreement. We find no justification in this instance to set aside the governing provisions of the interconnection agreement.

THE COMMISSION ORDERS that WWC's motion for reconsideration of Order No. 16171 is denied.

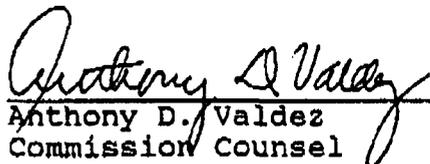
DONE at Honolulu, Hawaii this 13th day of March, 1998.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Yukio Naito, Chairman

By   
Dennis R. Yamada, Commissioner

APPROVED AS TO FORM:

  
Anthony D. Valdez  
Commission Counsel

By (RECUSED)  
Rae M. Loui, Commissioner

98-0352.ai

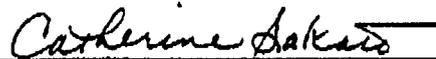
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
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GTE HAWAIIAN TELEPHONE COMPANY, INCORPORATED  
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Honolulu, HI 96841

HOSHIDA BENTO & MATSUNAGA  
ATTORNEYS AT LAW  
Pauahi Tower 705  
1001 Bishop Street  
Honolulu, HI 96813

  
Catherine Sakato

DATED: March 13, 1998

Respectfully submitted this 3<sup>rd</sup> day of June, 1999:

GTE SOUTH INCORPORATED

By: \_\_\_\_\_

A. RANDALL VOGELZANG  
GTE North Incorporated  
HQE03J35  
600 Hidden Ridge  
Irving, TX 75038  
(972) 718-2170

GAVIN E. HILL  
Gibson, Dunn & Crutcher, LLP  
1717 Main Street, Suite 5400  
Dallas, TX 75201  
(214) 698-3100

[local counsel]

Its Attorneys

THOMAS A. MARSHALL  
212 Washington Street  
P.O. Box 223  
Frankford, KY 40602-0223  
(502) 223-4723



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

May 24, 1999

To: All parties of record

RE: Case No. 99-206

We enclose one attested copy of the Commission's Order in  
the above case.

Sincerely,

*Stephanie Bell*

Stephanie Bell  
Secretary of the Commission

SB/hv  
Enclosure

Larry D. Callison  
State Manager  
GTE Service Corporation  
KY10H072  
150 Rojay Drive  
Lexington, KY 40503

Ms. Marceil M. Morrell  
AVP & Associate Counsel  
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201 N. Franklin  
Tampa, FL 33602

Director - Carrier Markets  
GTE Telephone Operations  
Mail Code HQE02L69  
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Irving, TX 75038

ATTN: Network Planning Manager  
Bluegrass Cellular, Inc.  
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Mr. John Selent  
Dinsmore & Shohl LLP  
2000 Meidinger Tower  
Louisville, KY 40202

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY BLUEGRASS )  
CELLULAR, INC. FOR )  
ENFORCEMENT OF ITS ) CASE NO. 99-206  
INTERCONNECTION AGREEMENT )  
WITH GTE SOUTH INCORPORATED )

O R D E R

On March 9, 1999, Bluegrass Cellular, Inc. ("Bluegrass Cellular") for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership, and Cumberland Cellular Partnership, filed a letter, which the Commission will treat as a petition, complaining of certain practices of GTE South Incorporated ("GTE") relating to the negotiated interconnection agreement which was approved on March 26, 1998 in Case No. 98-116.<sup>1</sup> Having reviewed the petition, the Commission finds that Bluegrass Cellular has stated a *prima facie* case against GTE which must be satisfied or answered by GTE within 10 days of the date of this Order. A copy of the petition filed by Bluegrass Cellular is attached hereto and incorporated herein.

BE IT SO ORDERED.

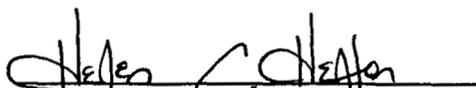
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<sup>1</sup> Case No. 98-116, Interconnection Agreement between GTE South Incorporated and Bluegrass Cellular Inc. for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership and Cumberland Cellular Partnership.

Done at Frankfort, Kentucky, this 24th day of May, 1999.

By the Commission

ATTEST:

  
Executive Director

**DINSMORE & SHOHL LLP**

ATTORNEYS AT LAW

2000 MEIDINGER TOWER

20TH FLOOR

LOUISVILLE, KENTUCKY 40202

TELEPHONE: 502-585-2450

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John E. Selent  
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Selent@dinslaw.com

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FAX: 513-896-1149

COLUMBUS OFFICE

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FAX: 614-628-6890

LEXINGTON OFFICE

606-425-1000

FAX: 606-425-1099

RECEIVED

DAYTON OFFICE

937-228-8012

MAR 9 1999

NORTHERN KENTUCKY OFFICE

606-338-1111

FAX: 606-338-1117

PUBLIC SERVICE  
COMMISSION

March 9, 1999

Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, KY 40602-0615

*RE: Interconnection Agreement (the "Agreement") between GTE South Incorporated ("GTE") and Bluegrass Cellular Inc. ("Bluegrass Cellular") for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership and Cumberland Cellular Partnership (GTE and Bluegrass Cellular, collectively, the "Parties")*

Dear Ms. Helton:

We are legal counsel to Bluegrass Cellular. We have been asked to contact you regarding a dispute which has arisen between Bluegrass Cellular and GTE regarding the above-captioned Agreement.

The Parties entered into the Agreement which the Public Service Commission of the Commonwealth of Kentucky (the "Commission") approved by an order issued on March 26, 1998 in Case No. 98-116. It is the position of Bluegrass Cellular that GTE should have paid the rates agreed to in the Agreement as of the date the Commission approved the Agreement; GTE, however, did not begin to pay these rates until June 15, 1998. Bluegrass Cellular has requested payment of the difference between the negotiated rates and the rates actually paid, but GTE has refused payment. The Parties have attempted to resolve this issue, but so far have not succeeded.

This letter will, first, explain why Bluegrass Cellular is entitled to the negotiated rates from the date the Agreement was approved by the Commission, and, second, will then outline why Bluegrass Cellular believes the Commission is the proper forum in which to resolve this dispute.

Helen C. Helton  
March 9, 1999  
Page 2

1. Bluegrass Cellular is entitled to a payment from GTE in the amount of \$28,422.79.

The law is clear that GTE should have paid the negotiated rates from the date the new Agreement was approved by the Commission on March 26, 1998. GTE did not begin payment of the agreed upon rates until June 15, 1998. Thus, GTE owes Bluegrass Cellular payment for the difference between the rates it paid and the negotiated rates from March 26, 1998 until June 15, 1998. Bluegrass Cellular has calculated the amount due to be \$28,422.79. Our rationale in this regard follows.

Congress specifically authorized the Federal Communications Commission (the "FCC") to adopt those regulations necessary to implement the Telecommunications Act of 1996 (the "Act.") 47 U.S.C.A. § 251 (d) (1). Part 51 subpart H of 47 CFR sets forth the provisions of the regulations of the FCC with respect to interim compensation, and other aspects of interconnection. A common element of these provisions is that interim compensation or alternative compensation schemes end when the appropriate authority approves an interconnection agreement between the parties.

Specifically, 47 CFR § 51.717(b) provides that:

From the date that a CMRS provider makes a request . . . **until a new agreement** has been either arbitrated or negotiated and **has been approved by a state commission**, the CMRS provider shall be entitled to assess upon the incumbent LEC the same rates for the transport and termination of local telecommunications traffic that the incumbent LEC assesses upon the CMRS provider pursuant to the pre-existing arrangement.

(emphasis added); See also 47 CFR § 51.715(c) (providing that "an interim arrangement **shall cease to be in effect** when . . . a voluntary agreement **has been negotiated and approved by a state commission**") (emphasis added).

Once an interconnection agreement has been approved, interim arrangements cease and the new agreement takes effect. There is, therefore, no question but that Bluegrass Cellular is entitled to the negotiated rates from March 26, 1998, the date upon

Helen C. Helton  
March 9, 1999  
Page 3

which the Commission approved the agreement. See United States v. American Trucking Ass'ns, 310 U.S. 534, 543 (1940) ("There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes.") See also id. at 549 ("[Commission] interpretations are entitled to great weight. This is peculiarly true here where the interpretations involve 'contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion . . .'" (citations omitted)); Osaka Shoshen Kaisha Line v. United States, 300 U.S. 98, 101 (1937) ("[W]here the words are plain there is no room for construction.").

Paragraph 11 at page IV-12 of the Agreement provides that if certain existing arrangements between the Parties are not in accordance with the requirements of the Agreement, the Agreement (and the charges for interconnection under the Agreement) will not apply to those arrangements. Paragraph 11 further provides that "[u]ntil such arrangements are brought into compliance with the requirement of this agreement, compensation will be in compliance with effective FCC rules, specifically Section 51.717<sup>1</sup> if applicable." GTE interprets this provision to mean that because the contemplated trunk changes had not been made as of the date of the Commission's approval, the rates and terms of the Agreement would not apply to traffic over those trunks. GTE agreed to implement the new rates effective June 15, 1998, whether or not the trunk changes had been made.

Bluegrass Cellular disputes GTE's interpretation. The new rate should have been effective as of March 26, 1998, the date the Commission approved the Agreement. Any other conclusion would mean that GTE, or any other utility, could contract its way out of the requirements of the Act. GTE has no such sovereign authority.

2. The Commission is the proper forum for the resolution of rate disputes.

It is the Commission's mission to ensure that every utility receives fair, just and reasonable rates for the services rendered. See Commission's website, (visited February 26, 1999) <<http://www.psc.state.ky.us/agencies/psc/pscinfo.htm>>. The legislature has

---

<sup>1</sup>Section 51.717(b), quoted *supra*, calls for reciprocal compensation to end when a new agreement has been approved by a state commission.

Helen C. Helton  
March 9, 1999  
Page 4

given the Commission "original jurisdiction over complaints as to rates or service of any utility." KRS § 278.260 (1).

Moreover, the Commission is charged with the protection of the public interest. When it drafted the Act, Congress made clear its intention to enable entrepreneurs and small businesses to enter the telecommunications market, thus broadening competition and improving service to consumers.<sup>2</sup> See 47 U.S.C.A. §§ 256 (a) and 257 (a)-(b). The Act provides that interconnection agreements are to be "submitted for approval to the State commission." 47 U.S.C.A. § 252 (e). "[A]n agreement (or any portion thereof) adopted by negotiation under subsection (a) of [§ 252]" may be rejected by the Commission if it "is not consistent with the public interest, convenience, and necessity." 47 U.S.C.A. § 252 (e) (2). The role of the Commission under the Act is that of a legislative rate setter or dispute adjudicator between utilities. These are governmental functions.

GTE contends or will contend that the Agreement contains provisions for dispute resolution which call for negotiations (Paragraph 12.2 at page III-5) and arbitration (Paragraph 12.3 at page III-6). Although Bluegrass Cellular attempted to negotiate in good faith to resolve this dispute, it objects to arbitration, which it views as an effort on the part of GTE to contract its way out of the requirements of the Act. Because the Commission processes approximately seven hundred (700) cases a year, of which approximately 40% are rate cases, (Commission's website, supra.) it has special expertise in evaluating rate disputes--an expertise which no arbitrator can claim.

The Agreement's purported requirement that claims be submitted to arbitration is not consistent with the public interest. It removes the claim from the purview of the forum most knowledgeable and best able to resolve the dispute in such a way as to balance the interests of the Parties while at the same time protect the public interest and the purposes of the Act. An independent arbitrator will not have the same responsibility to ensure that the purposes of the Act are not thwarted through private contract. See, e.g., Smith v. Hillerich & Bradsby Co., 253 S.W.2d 629, 630 (Ky. 1952) (holding that "arbitrators are not expected or required to follow the strict rules of law"). The resolution of this claim affects

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<sup>2</sup>GTE has frequently attempted to delay implementation of the Act. See, e.g., GTE South, Inc. v. Breathitt, 963 F. Supp. 610, 612 (E.D. Ky. 1997) (collecting cases). This is merely one more attempt.

Helen C. Helton  
March 9, 1999  
Page 5

more than just the Parties involved: it affects the issue of fair competition—one of the goals Congress envisioned—which directly affects the rates and service passed on to consumers. Although Bluegrass Cellular concedes that in purely private issues an agreement to submit disputes to arbitration is enforceable, this is not the case here. “The good of the community, in certain cases . . . restrict[s] the freedom of contracting.” City of Princeton v. Princeton Elec. Light & Power Co., 179 S.W. 1074, 1078 (Ky. 1915). If a provision of a “contract has a tendency to injure the public or is against the public good,” it may be set aside. See id.; see also Duke v. Brown Hotel Co., 481 S.W.2d 289, 291 (Ky. 1972) (stating “contracts between . . . parties, which are evasive of [legislation with a broad social purpose] will not prevent a court, as a matter of legislatively declared public policy, from disregarding the evasive recitation.”). This is precisely the case here; GTE’s probable insistence that the Commission is not the proper forum to resolve this dispute is nothing more than an attempt to repeal the Act and deprive the Commission of the power to enforce the Act. GTE cannot repeal a statute nor deprive the Commission of its power to enforce the Act, and KRS Chapter 278.

3. If GTE contends that the Agreement does not apply to the rates until the contemplated trunk changes have been made, then this dispute falls outside the Agreement, and Bluegrass Cellular’s claim is not subject to arbitration.

GTE contends that the negotiated rates are not applicable for the time period in question because the trunk line changes had not yet taken place, thus making the agreement inapplicable. If that is so, then the dispute is “not one arising out of the agreement itself,” and the provision of the agreement requiring arbitration does not apply. See American Advertising Distributions, Inc. v. American Coop. Advertising, Inc., 639 S.W.2d 775 (Ky. 1982) (holding that where an action does not arise out of an agreement, it is not subject to the provisions of the agreement designating a preselected forum for disputes arising under the agreement). Bluegrass Cellular’s claim, therefore, is not subject to arbitration and the Commission is the proper forum for its resolution.

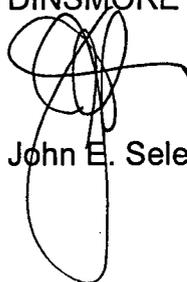
In conclusion, Bluegrass Cellular respectfully requests that the Commission assume the rate-setting authority given to it by both state and federal law and issue an order declaring that GTE should have begun using the negotiated rates as of March 26, 1998 and directing GTE to remit payment to Bluegrass Cellular in the amount of \$28,422.79 plus prejudgment interest at the rate of eight percent (8%) per annum from the date this debt was due and owing. See KRS § 360.010.

Helen C. Helton  
March 9, 1999  
Page 6

Thank you, and if you have any questions with regard to this matter please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to be "John E. Selent", written over the typed name below.

John E. Selent

JES/BMA/rk

cc: Ron Smith  
Denny Lish

::ODMA\PCDOCS\LOUDOCS\277531



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

May 18, 1999

To: All parties of record

RE: Case No. 99-206  
GTE SOUTH, INC.  
(Complaints - Rates, Service) OF BLUEGRASS CELLULAR, INC.

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received May 10, 1999 and has been assigned Case No. 99-206. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

A handwritten signature in cursive script that reads "Stephanie Bell".

Stephanie Bell  
Secretary of the Commission

SB/jc

Larry D. Callison  
State Manager  
GTE Service Corporation  
KY10H072  
150 Rojay Drive  
Lexington, KY. 40503

Ms. Marceil M. Morrell  
AVP & Associate Counsel  
GTE South Incorporated  
Mail Code FLTCO717  
201 N. Franklin  
Tampa, FL. 33602

Director - Carrier Markets  
GTE Telephone Operations  
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ATTN: Network Planning Manager  
Bluegrass Cellular, Inc.  
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Mr. John Selent  
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Louisville, KY. 40202

# DINSMORE & SHOHL LLP

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DAYTON OFFICE

937-228-8012

FAX: 937-228-8012

NORTHERN KENTUCKY OFFICE

606-392-1500

FAX: 606-392-2543

RECEIVED  
MAR 10 1999  
PUBLIC SERVICE  
COMMISSION

March 9, 1999

Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
P.O. Box 615  
Frankfort, KY 40602-0615

Case No. 99-206

RE: Interconnection Agreement (the "Agreement") between GTE South Incorporated ("GTE") and Bluegrass Cellular Inc. ("Bluegrass Cellular") for and on behalf of Kentucky RSA No. 3 Cellular General Partnership, Kentucky RSA No. 4 Cellular General Partnership and Cumberland Cellular Partnership (GTE and Bluegrass Cellular, collectively, the "Parties")

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Helen C. Helton  
March 9, 1999  
Page 2

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Specifically, 47 CFR § 51.717(b) provides that:

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(emphasis added); See also 47 CFR § 51.715(c) (providing that "an interim arrangement **shall cease to be in effect** when . . . a voluntary agreement **has been negotiated and approved by a state commission**") (emphasis added).

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Helen C. Helton

March 9, 1999

Page 3

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Helen C. Helton  
March 9, 1999  
Page 4

given the Commission "original jurisdiction over complaints as to rates or service of any utility." KRS § 278.260 (1).

Moreover, the Commission is charged with the protection of the public interest. When it drafted the Act, Congress made clear its intention to enable entrepreneurs and small businesses to enter the telecommunications market, thus broadening competition and improving service to consumers.<sup>2</sup> See 47 U.S.C.A. §§ 256 (a) and 257 (a)-(b). The Act provides that interconnection agreements are to be "submitted for approval to the State commission." 47 U.S.C.A. § 252 (e). "[A]n agreement (or any portion thereof) adopted by negotiation under subsection (a) of [§ 252]" may be rejected by the Commission if it "is not consistent with the public interest, convenience, and necessity." 47 U.S.C.A. § 252 (e) (2). The role of the Commission under the Act is that of a legislative rate setter or dispute adjudicator between utilities. These are governmental functions.

GTE contends or will contend that the Agreement contains provisions for dispute resolution which call for negotiations (Paragraph 12.2 at page III-5) and arbitration (Paragraph 12.3 at page III-6). Although Bluegrass Cellular attempted to negotiate in good faith to resolve this dispute, it objects to arbitration, which it views as an effort on the part of GTE to contract its way out of the requirements of the Act. Because the Commission processes approximately seven hundred (700) cases a year, of which approximately 40% are rate cases, (Commission's website, supra.) it has special expertise in evaluating rate disputes--an expertise which no arbitrator can claim.

The Agreement's purported requirement that claims be submitted to arbitration is not consistent with the public interest. It removes the claim from the purview of the forum most knowledgeable and best able to resolve the dispute in such a way as to balance the interests of the Parties while at the same time protect the public interest and the purposes of the Act. An independent arbitrator will not have the same responsibility to ensure that the purposes of the Act are not thwarted through private contract. See, e.g., Smith v. Hillerich & Bradsby Co., 253 S.W.2d 629, 630 (Ky. 1952) (holding that "arbitrators are not expected or required to follow the strict rules of law"). The resolution of this claim affects

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<sup>2</sup>GTE has frequently attempted to delay implementation of the Act. See, e.g., GTE South, Inc. v. Breathitt, 963 F. Supp. 610, 612 (E.D. Ky. 1997) (collecting cases). This is merely one more attempt.

Helen C. Helton  
March 9, 1999  
Page 5

more than just the Parties involved: it affects the issue of fair competition--one of the goals Congress envisioned--which directly affects the rates and service passed on to consumers. Although Bluegrass Cellular concedes that in purely private issues an agreement to submit disputes to arbitration is enforceable, this is not the case here. "The good of the community, in certain cases . . . restrict[s] the freedom of contracting." City of Princeton v. Princeton Elec. Light & Power Co., 179 S.W. 1074, 1078 (Ky. 1915). If a provision of a "contract has a tendency to injure the public or is against the public good," it may be set aside. See id.; see also Duke v. Brown Hotel Co., 481 S.W.2d 289, 291 (Ky. 1972) (stating "contracts between . . . parties, which are evasive of [legislation with a broad social purpose] will not prevent a court, as a matter of legislatively declared public policy, from disregarding the evasive recitation."). This is precisely the case here; GTE's probable insistence that the Commission is not the proper forum to resolve this dispute is nothing more than an attempt to repeal the Act and deprive the Commission of the power to enforce the Act. GTE cannot repeal a statute nor deprive the Commission of its power to enforce the Act, and KRS Chapter 278.

3. If GTE contends that the Agreement does not apply to the rates until the contemplated trunk changes have been made, then this dispute falls outside the Agreement, and Bluegrass Cellular's claim is not subject to arbitration.

GTE contends that the negotiated rates are not applicable for the time period in question because the trunk line changes had not yet taken place, thus making the agreement inapplicable. If that is so, then the dispute is "not one arising out of the agreement itself," and the provision of the agreement requiring arbitration does not apply. See American Advertising Distributions, Inc. v. American Coop. Advertising, Inc., 639 S.W.2d 775 (Ky. 1982) (holding that where an action does not arise out of an agreement, it is not subject to the provisions of the agreement designating a preselected forum for disputes arising under the agreement). Bluegrass Cellular's claim, therefore, is not subject to arbitration and the Commission is the proper forum for its resolution.

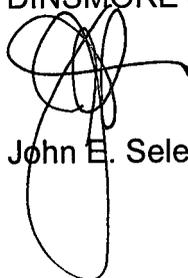
In conclusion, Bluegrass Cellular respectfully requests that the Commission assume the rate-setting authority given to it by both state and federal law and issue an order declaring that GTE should have begun using the negotiated rates as of March 26, 1998 and directing GTE to remit payment to Bluegrass Cellular in the amount of \$28,422.79 plus prejudgment interest at the rate of eight percent (8%) per annum from the date this debt was due and owing. See KRS § 360.010.

Helen C. Helton  
March 9, 1999  
Page 6

Thank you, and if you have any questions with regard to this matter please call me.

Very truly yours,

DINSMORE & SHOHL LLP

A handwritten signature in black ink, appearing to be "John E. Selent", written over the typed name.

John E. Selent

JES/BMA/rk

cc: Ron Smith  
Denny Lish

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